

DR. P. S. MALIK

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v.

HIGH COURT OF DELHI & ANR.

(Writ Petition (Civil) No.705 of 2018)

AUGUST 21, 2019

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[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

Constitution of India – Arts.233 and 235 – Petitioner was working as Additional District Judge at Dwarka, New Delhi –Written complaints submitted against the petitioner, to the Chief Justice of the High Court of Delhi, by a lady Junior Judicial Assistant who worked as Ahlmad in the petitioner’s Court from 18.05.2015 to 18.05.2016 alleging sexual harassment at work place– On 13.07.2016, the petitioner was placed under suspension – Internal Complaints Committee constituted – Preliminary Report submitted to the Full Court of the High Court opining that disciplinary inquiry be held against the petitioner – Full Court resolved to hold the inquiry – Inquiry Report dated 09.03.2018 submitted by the Committee – Petitioner has filed the present writ petition inter alia submitting that there being an Inquiry Report by Internal Complaints Committee as envisaged by ss.11 and 13 of the 2013 Act, the High Court could not have decided to initiate the inquiry or suspend the petitioner – Held: Petitioner is member of Judicial Service for which disciplinary authority is the High Court – The word “control” occurring in Art.235 means not only the general superintendence of the working of the Courts but includes the disciplinary control of the judicial officers, i.e., the district judges and judges subordinate to him – High Court can initiate disciplinary proceedings against judicial officers – Power to suspend the judicial officer vests in the High Court– Under the 2013 Act, complaint mechanism and mechanism for constitution of the Internal Complaints Committee, mechanism to inquire the complaint, are all for protection of dignity and welfare of women at workplace – Provisions of ss.11, 13 in no manner affect the control of the High Court u/Art.235 with respect to judicial officers– Full Court of the High Court is in no manner precluded from initiating disciplinary inquiry against the petitioner and placing him under suspension on being satisfied that

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- A *sufficient material existed – No error in the decision of the Full Court dated 13.07.2016 – Further, submission of the petitioner that due to non-supply of Preliminary Inquiry Report dated 05.11.2016, the proceedings have been vitiated, not accepted – Only limited issues as pressed by the petitioner have been considered –*
- B *Disciplinary proceedings against the petitioner still underway – It is open for the petitioner to raise all pleas of facts and law before the appropriate authority – Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – Chapters II, IV & V – ss.4, 11 and 13 – All India Services (Discipline and Appeal) Rules, 1969 – r.8.*
- C *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – ss.11, 13 and 18 – Complaint of sexual harassment at work place made against the petitioner, judicial officer in Delhi Higher Judicial Services, by an employee in his Court – Present writ petition filed by the petitioner inter alia*
- D *submitting that copy of the Preliminary Inquiry Report not being supplied to him, he has been denied right to appeal – Held: Preliminary Inquiry Report dated 05.11.2016 did not contain any findings on allegations made against the petitioner – It only opined that inquiry should be held – Even u/s.11(1) in the second proviso, the only contemplation is to make available a copy of the findings –*
- E *Thus, the report in which there are no findings, parties are not entitled to have the copy – Inquiry Report referred in s.13 is the Report which has been submitted by Internal Complaints Committee after completion of the inquiry – Inquiry Report by Internal Complaints Committee dated 09.03.2018 was admittedly supplied to the*
- F *petitioner– Right of appeal given against the recommendation made u/s.13(2) or (3) are appealable u/s.18– Thus, the right of appeal is given to an aggrieved person only when report is submitted u/s.13 to the employer – No prejudice caused to the petitioner by non-supply of Report dated 05.11.2016.*
- G **Dismissing the writ petition, the Court**
- H **HELD: 1.1 Part VI of the Constitution of India deals with “The States”. Chapter VI contains heading “Subordinate Courts”. Articles 233 and 235 of the Constitution of India refer to two distinct powers. The first is power of appointment, posting and promotion of District Judges and second is power of control over**

Judicial Officers of the State. The word “control” occurring in Article 235 means not only the general superintendence of the working of the Courts but includes the disciplinary control of the judicial officers, i.e., the district judges and judges subordinate to him. The word “control” used in Article 235 has been held by Supreme Court to be disciplinary control. Disciplinary authority with regard to judicial officers is the High Court and it is the High Court, which can initiate the disciplinary proceedings against judicial officers. The High Court can also suspend a member of the judiciary. Insofar as dismissal or removal is concerned, the said orders are required to be passed by the Governor on the recommendation of the High Court. The fact that the orders of dismissal or removal are issued by the approval of the Governor in no manner denude the disciplinary control of the High Court. [Paras 9, 14 and 16] [967-D-E; 971-A; 972-G-H]

1.2 The petitioner in the present case is a member of Judicial Service for which disciplinary authority is the High Court. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. Chapter II of Act, 2013 deals with constitution of Internal Complaints Committee. Chapter IV deals with complaint. In Chapter IV, one of the sections is Section 11, which deals with inquiry into complaint. Chapter V deals with inquiry into complaint and Section 13 deals with inquiry report. The Act, 2013 is a parliamentary legislation, the preamble of which outlines the necessity of legislation. [Paras 18-21] [974-A-C; 975-B; 976-B-C]

1.3 The provisions of the Act, complaint mechanism and mechanism for constitution of the Internal Complaints Committee, mechanism to inquire the complaint are all for protection of dignity and welfare of women at workplace. The provisions of Sections 11 and 13 in no manner affect the control of the High Court under Article 235, which it has with respect to judicial officers. The power to suspend the judicial officer vests in the High Court. The Full Court of the High court is in no manner precluded from initiating disciplinary inquiry against the petitioner and placing

- A the petitioner under suspension on being satisfied that sufficient material existed. The High Court in its meeting dated 19.07.2016 has resolved to send the complaint of the employee to the Internal Complaints Committee and the Internal Complaints Committee having opined that inquiry need to be held, further steps were taken in accordance with Act, 2013. There is no error in the decision of the Full Court dated 13.07.2016 to suspend the petitioner and initiate the inquiry proceedings against the petitioner. Preliminary Inquiry Report dated 05.11.2016 did not contain any findings on allegations made against the petitioner, Preliminary Inquiry Report only opined that inquiry should be held. The Inquiry Report, which has been referred to in Section 13 is an Inquiry Report, which has been submitted by Internal Complaints Committee after completion of the inquiry. In the present case, the Inquiry Report by Internal Complaints Committee is dated 09.03.2018, which has been admittedly supplied to the petitioner, the right of appeal given against the recommendation made under sub-section(2) or sub-section(3) of Section 13 are appealable under Section 18 of the Act. Thus, the right of appeal is given to an aggrieved person only when report is submitted under Section 13 to the employer. Section 13(3) contemplates the report of Internal Complaints Committee when it “arrives at the conclusion that the allegation against the respondent has been proved”. It is not the case of any of the parties that the report of the Committee dated 05.11.2016 is the report where allegation against the petitioner has been proved. Even under Section 11(1) in the second proviso, the only contemplation is to make available a copy of the findings. Thus, when the report in which there are no findings, parties are not entitled to have the copy. High Court in its counter affidavit has pleaded that the Report dated 05.11.2016 was not a report containing any findings against the petitioner rather only opinion was expressed that disciplinary inquiry be initiated against the petitioner. No prejudice can be held to be caused to the petitioner by non-supply of the Preliminary Inquiry Report dated 05.11.2016. The copy of memo of charge dated 23.02.2017 has been brought on the record, which also clearly indicates that the charge memo does not refer to Preliminary Inquiry Report dated 05.11.2016. Thus, no prejudice can be said to have been caused to the
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petitioner by non-supply of Report dated 05.11.2016. The submission of the counsel for the petitioner that due to non-supply of Preliminary Inquiry Report dated 05.11.2016, the proceedings have been vitiated, not accepted. With regard to charge memo dated 23.02.2017, inquiry conducted by Internal Complaints Committee culminating into Report dated 09.03.2018, it is open for the petitioner to raise all pleas of facts and law before the appropriate authority. This Court has only considered limited issues as pressed by the petitioner. Apart from above, all questions and issues are left open to both the parties.[Paras 22, 24- 26] [976-D-F; 978-A, E-H; 979-A-C]

State of West Bengal and Another v. Nripendra Nath Bagchi AIR 1966 SC 447 : [1966] 1 SCR 771; *Registrar (Admn.) High Court of Orissa, Cuttack v. Sisir Kanta Satapathy (Dead) by LRs. and Another* (1999) 7 SCC 725 : [1999] 2 Suppl. SCR 473 – followed.

State of Tamil Nadu Rep. by Secretary to Govt.(Home) v. Promod Kumar IPS and Another AIR 2018 SC 4060 – held inapplicable.

Baradakanta Mishra v. High Court of Orissa and Another (1976) 3 SCC 327 : [1976] Suppl. SCR 561; *Rajendra Singh Verma (Dead) Through LRs. and Others v. Lieutenant Governor (NCT of Delhi) and Others* (2011) 10 SCC 1 : [2011] 12 SCR 496 – relied on.

Chief Justice of Andhra Pradesh and Others v. L.V.A. Dixitulu and Others, (1979) 2 SCC 34 : [1979] 1 SCR 26 – referred to.

Case Law Reference

[1966] 1 SCR 771	followed	Para 9
[1976] Suppl. SCR 561	relied on	Para 11
[1999] 2 Suppl.SCR 473	followed	Para 12
[2011] 12 SCR 496	relied on	Para 13
[1979] 1 SCR 26	referred to	Para 15
AIR 2018 SC 4060	held inapplicable	Para 17

A CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil)
No. 705 of 2018

Under Article 32 of The Constitution of India

Varinder Kumar Sharma, Ms. Parul Sharma, Yugal Kishore
Prasad, Advs. for the Petitioner.

B P. S. Narsimha, Sr. Adv., Ms. Binu Tamta, Dhruv Tamta, Rahul
G. Tanwani, Ms. Sindoor VNL, Advs. for the Respondents.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

C 1. The petitioner, A Judicial Officer in Delhi Higher Judicial
Services, against whom disciplinary proceedings alleging sexual
harassment is underway, has filed this writ petition under Article 32 of
the Constitution of India praying for following reliefs:-

D “a. issue a writ, order or direction in the nature of certiorari
quashing the resolution of Respondent No.1, the Full Court of
Delhi High Court dated 13.07.2016 in Toto, cited in the report
dated 09.03.2018 (Annexure-P-12) and also all subsequent
resolutions passed by Full Court of Delhi High Court dated
E 19.07.2016, 16.11.2016, 23.02.2017, 06.07.2017 or on any other
date in relation to this enquiry, cited in the report dated
09.03.2018 (Annexure-P- 12) as the same are arbitrary, without
any jurisdiction and violative of the provisions of Sexual
Harassment of Women at Workplace Prevention, Prohibition
and Redressal) Act of 2013, Art. 14 and Art. 21 of the
Constitution of India;

F b. issue a writ, order or direction in the nature of certiorari
quashing the proceedings of ICC the Respondent number 2
as held by it under the Provisions of the Act of 2013.

G c. issue a writ, order or direction in the nature of certiorari quashing
the Charge sheet dated 23.02.2017 (Annexure-P-7) issued
by the Respondent No.1 on the recommendation of the
Respondent No.2;

H d. issue a writ, order or direction in the nature of certiorari quashing
the report dated 9.3.2018 (Annexure-P-12) of the ICC, the

2nd Respondent herein along with all the proceedings of the Respondents leading thereto; A

e. issue a writ, order or direction in the nature of certiorari quashing the letter of e Hon'ble Delhi High Court dated 15.05.2018 (Annexure-P-11) issued by Respondent No.1; and

f. pass any other writ, order or direction as this Hon'ble Court deems fit to grant in the interest of justice.” B

2. Brief facts necessary for deciding this writ petition are:-

2.1 The petitioner has been working as Additional District Judge at Dwarka, New Delhi. On 05.07.2016, a written complaint was submitted against the petitioner by a lady, Junior Judicial Assistant (hereinafter referred to as “employee”) alleging sexual harassment at work place. The complaint was addressed to the Chief Justice of High Court of Delhi. The Junior Judicial Assistant was working as Ahlmad in the Court of the petitioner w.e.f. 18.05.2015. She continued to work in that capacity till 18.05.2016. Another complaint dated 11.07.2016 was submitted by the employee to the Chief Justice. Complaint submitted by the employee came for consideration before the Full Court of the High Court on 13.07.2016, which resolved as under:- C
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i. The Judicial Officer be placed under suspension with immediate effect pending disciplinary proceeding contemplated against him.

ii. The Registrar General will forward the complaint dated 05.07.2016 to SHO of the concerned Police Station for appropriate action in accordance with law under intimation to this Court. F

iii. Registry to take steps in anticipation of the confirmation of the Minutes.

2.2 The Full Court of the Delhi High Court by further resolution dated 19.07.2016 resolved to constitute an Internal Complaints Committee consisting of five members to inquire into the allegation of sexual harassment made against the petitioner. The petitioner as well as the employee appeared before the G
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- A Internal Complaints Committee (hereinafter referred to as “Committee”). The petitioner was suspended by order dated 13.07.2016 pending disciplinary proceedings. The employee further submitted a detailed statement dated 28.07.2016 before the Committee. The petitioner submitted his reply to the Committee on 02.09.2016. On 19.09.2016, the Committee interacted with both the parties separately. On 05.11.2016, the Committee submitted a Preliminary Report to the Full Court. By its Report dated 05.11.2016, the Committee opined that a disciplinary inquiry be held against the petitioner. Full Court of the High Court in its meeting dated 16.11.2016 resolved that the disciplinary proceedings for major penalty under Rule 8 of All India Services (Discipline and Appeal) Rules, 1969 be initiated against the petitioner.
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- 2.3 The memo of charges dated 22/23.02.2017 was given to the petitioner containing, article of charges and statement of imputations. The petitioner submitted written statement on 11.03.2017. The Full Court on 06.07.2017 considered the written statement of defence dated 11.03.2017 of petitioner and resolved to hold the inquiry. The Full Court resolved for constituting a Committee in terms of Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as “Act, 2013”) chaired by Hon’ble Ms. Justice Hima Kohli, who was appointed as the Inquiring Authority.
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- 2.4 The inquiry before the Inquiring Committee proceeded and Report dated 09.03.2018 has been submitted by the Internal Complaints Committee. The Inquiry Report submitted by the Committee was placed before the Full Court in its meeting held on 25.04.2018 which resolved to forward the Inquiry Report to the petitioner and to ask him to submit his written submissions. Full Court in its meeting dated 01.08.2018 also resolved to supply certified copies of Full Court Meeting Minutes dated 13.07.2016, 19.07.2016 and 16.11.2016 to the petitioner. High Court also resolved that since the Preliminary Inquiry Report dated 05.11.2016 has not been relied upon, the same be not supplied to the petitioner. After receipt of the Inquiry Report, the petitioner has filed this writ petition on 08.06.2018.
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3. We have heard Shri Varinder Kumar Sharma, learned counsel for the petitioner and Shri P.S. Narsimha, learned senior counsel for the respondent. A

4. Learned counsel for the petitioner contends that the Full Court of the High Court on receiving the complaint dated 05.07.2016 did not follow the procedure given in Act, 2013. It is submitted that Full Court ought to have handed over the complaint to the Internal Complaints Committee for inquiry. Full Court erred in issuing three punitive directions on 13.07.2016 against the petitioner. The order dated 13.07.2016 was premature being before an inquiry or opportunity to the petitioner of being heard. Further, they were passed by an authority, which had no legal competence to pass those directions under the Delhi Higher Judicial Service Rules, 1970 and the All India Services Rules. There has been blatant violation of Act, 2013 in the petitioner's case vitiating the entire procedure. The Committee after conducting the inquiry has submitted a Report dated 05.11.2016, which report was required to be given to the petitioner as per Act, 2013 but was denied to the petitioner. The Committee having not found proved the allegation against the petitioner, Full Court ought not to have proceeded to impose penalty against the petitioner. The respondents have wrongly assumed that they are the disciplinary authority of the petitioner whereas under Rule 26A of the Delhi Higher Judicial Service Rules, 1970 (hereinafter referred to as "Rules, 1970"), the High Court has been debarred from having any right over the members of the service in matters relating to major penalties. The charge memo dated 23.02.2017 was issued without even information to the disciplinary authority, i.e., the Governor. B C D E

5. Shri Narsimha, learned senior counsel appearing for the respondents submits that High Court having control over judicial officers under Article 235 of the Constitution, it did not lack jurisdiction in placing the petitioner under suspension and directing for a regular disciplinary inquiry. Inquiry having conducted by the Committee, which after holding full-fledged inquiry, giving full opportunity to the petitioner has submitted a Report dated 09.03.2018. The Inquiry Report dated 09.03.2018 was served on the petitioner by letter dated 16.05.2018, where petitioner was asked to submit his written representation or statement within one month, which has not yet been done. It is submitted that in view of the fact that the petitioner has filed this petition in this Court and matter being pending due to deference to this Hon'ble Court, no further steps F G H

A have been taken in the inquiry. It is submitted that the Report dated 05.11.2016 was a Preliminary Report submitted by the Committee giving opinion that the disciplinary inquiry be held, the said report being a Preliminary Inquiry Report, it was not necessary to serve such report to the petitioner. The Inquiry Report conducted as per Section 11 of the Act, 2013 and as per Section 13, the copy of the report has been duly served on the petitioner. Further, the Preliminary Inquiry Report dated 05.11.2016 was not taken into consideration for framing charges against the petitioner and hence the High Court did not give a copy of the said report to the petitioner.

C 6. We have heard the learned counsel for the parties and have perused the records.

D 7. At very outset, we indicated to the learned counsel for the petitioner that the disciplinary proceedings against the petitioner being still underway, having not yet taken any final shape, most of the issues, which are sought to be raised by the writ petitioner in this writ petition can very well be canvassed and pressed before in the disciplinary proceedings. We indicated that any expression of opinion by this Court on issues, which are relevant and material in the disciplinary inquiry may prejudice the parties.

E 8. Learned counsel for the petitioner specifically submitted that this Court may consider those submissions, which go to the very root of the matter specially non-compliance of the provisions of Act, 2013. We have already extracted the reliefs claimed in the writ petition. Claims in the writ petition are very wide, which include quashing the proceedings of Internal Complaints Committee as well as Charge Sheet dated 23.02.2017 and the Report dated 09.03.2018. We are of the view that the petitioner having still opportunity in the disciplinary proceedings to challenge the proceedings of the Internal Complaints Committee, the charge sheet as well as the Inquiry Report dated 09.03.2018, we deem it appropriate not to enter into above issues leaving it open to the petitioner to raise all submissions and pleas before the appropriate authority. In this writ petition, we, however, proceed to examine only few limited issues, which has been pressed by the petitioner. The only issues, which we proceed to consider are:-

H (i) Whether the High Court is a disciplinary authority of the petitioner, competent to initiate the disciplinary proceedings

against the petitioner and suspend him as per Delhi Higher Judicial Service Rules, 1970 and All India Services (Discipline and Appeal) Rules, 1969? A

(ii) Whether the decision of the Full Court on 13.07.2016 initiating enquiry against the petitioner and placing him under suspension was beyond jurisdiction? B

(iii) Whether the Preliminary Inquiry Report submitted by Internal Complaints Committee dated 05.11.2016 ought to have been supplied to the petitioner and non-supply of such Preliminary Inquiry Report dated 05.11.2016 vitiated the entire proceedings? C

Issue Nos. 1 and 2

9. Issue Nos.1 and 2 being connected are taken together. Part VI of the Constitution of India deals with “The States”. Chapter VI contains heading “Subordinate Courts”. Articles 233 and 235 of the Constitution of India refers to two distinct powers. The first is power of appointment, posting and promotion of District Judges and second is power of control over Judicial Officers of the State. The word “control” occurring in Article 235 means not only the general superintendence of the working of the Courts but includes the disciplinary control of the judicial officers, i.e., the district judges and judges subordinate to him. The word “control” used in Article 235 has been held by this court to be disciplinary control. A Constitution Bench of this Court in **State of West Bengal and Another Vs. Nripendra Nath Bagchi, AIR 1966 SC 447** had occasion to consider the nature of the control vested in the High Court in Article 235 of the Constitution over district judges. In paragraph No.13 following was held:- D
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“15. We do not accept this construction. The word “control” is not defined in the Constitution at all. In Part XIV which deals with Services under the Union and the States the words “disciplinary control” or “disciplinary jurisdiction” have not at all been used. It is not to be thought that disciplinary jurisdiction of services is not contemplated. In the context the word “control” must, in our judgment, include disciplinary jurisdiction. Indeed, the word may be said to be used as a term of art because the Civil Services (Classification Control and Appeal) Rules used the word “control” and the only rules which can legitimately come under the word G
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A “control” are the Disciplinary Rules. Further, as we have already shown, the history which lies behind the enactment of these Articles indicate that “control” was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well the very object would be frustrated. This aid to construction is admissible because to find out the meaning of a law, recourse may legitimately be had to the prior state of the law, the evil sought to be removed and the process by which the law was evolved. The word “control”, as we have seen, was used for the first time in the Constitution and it is accompanied by the word “vest” which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge.....”

D 10. The Constitution Bench further held that under Article 235 of the Constitution, High Court can hold enquiries, impose punishments other than dismissal or removal. In paragraph No. 18, following has been held:-

E “18. There is, therefore, nothing in Article 311 which compels the conclusion that the High Court is ousted of the jurisdiction to hold the enquiry if Article 235 vested such a power in it. In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, subject however to the conditions of service, and a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by clause (2) of Article 311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could have held the enquiry in this case. To hold otherwise will be to reverse the policy which has moved determinedly in this direction.”

G 11. To the same effect is another Three Judge Bench judgment of H this Court is **Baradakanta Mishra Vs. High Court of Orissa and**

Another, (1976) 3 SCC 327 where in paragraph No.20, following was laid down:- A

“20. The scope of Article 235 has been examined by this Court in several decisions. The important decisions are *State of West Bengal v. Nripendra Nath Bagchi*, AIR 1966 SC 447; *High Court of Calcutta v. Amal Kumar Roy*, AIR 1962 SC 1704; *High Court of Punjab and Haryana v. State of Haryana (In the matter of N.S. Rao)*, (1975) 1 SCC 843. The effect of the decisions is this. The word “control” as used in Article 235 includes disciplinary control over District Judges and judges inferior to the post of District Judge. This control is vested in the High Court to effectuate the purpose of securing independence of the subordinate judiciary and unless it included disciplinary control as well the very object would be frustrated. The word “control” is accompanied by the word “vest” which shows that the High Court is made the sole custodian of the control over the judiciary. Control is not merely the power to arrange the day-to-day working of the court but contemplates disciplinary jurisdiction on the presiding judge. The word “control” includes something in addition to the mere superintendence of these courts. The control is over the conduct and discipline of judges. The inclusion of a right of appeal against the orders of the High Court in the conditions of service indicates an order passed in disciplinary jurisdiction. The word “deal” in Article 235 also indicates that the control is over disciplinary and not mere administrative jurisdiction. The control which is vested in the High Court is complete control subject only to the power of the Governor in the manner of appointment including initial posting and promotion of District Judges and dismissal, removal, reduction in rank of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal subject however to the conditions of service to a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by clause (2) of Article 311 unless such an opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could make enquiries into disciplinary conduct.”

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A 12. Another Constitution Bench in **Registrar (Admn.), High Court of Orissa, Cuttack Vs. Sisir Kanta Satapathy (Dead) by Lrs. and Another, (1999) 7 SCC 725** after reviewing all earlier judgments, laid down following in paragraph No.16:-

B “16. We are clearly of the view that while the High Court retains the power of disciplinary control over the subordinate judiciary, including the power to initiate disciplinary proceedings, suspend them pending enquiries and impose punishment on them but when it comes to the question of dismissal, removal, reduction in rank or termination of the services of the judicial officer, on any count whatsoever, the High Court becomes only the recommending authority and cannot itself pass such an order (vide *Inder Prakash Anand case, (1976) 2 SCC 977* and *Rajiah case, (1988) 3 SCC 211*).”

D 13. We may also refer to another judgment of this Court in **Rajendra Singh Verma (Dead) through LRs. and Others Vs. Lieutenant Governor (NCT of Delhi) and Others, (2011) 10 SCC 1**. This Court in the above case had occasion to consider control of Article 235 over the judicial officers of NCT of Delhi. This Court after elaborating the control of the High Court with reference to judicial officers of NCT Delhi had laid down that High Court alone is the sole authority competent to initiate disciplinary proceedings against Subordinate Judicial Officers or to impose various punishments. The contentions raised before the Court based on Article 239AA(4) of the Constitution that the Scheme in NCT Delhi is different was rejected. Following was laid down in paragraph No.136:-

F “136. Reliance on Article 239-AA(4) is entirely out of place so far as the High Court is concerned, dealing with the judicial officers. To give any other interpretation to Article 239-AA(4) will be to defeat the supreme object underlying Article 235 of the Constitution, specially intended for protection of the judicial officers and necessarily independence of the subordinate judiciary. It is absolutely clear that the Governor cannot take the aid and advice of his Council of Ministers in the case of judicial officers and accept its advice and act according to it. There is no room for any outside body between the Governor and the High Court. Therefore, this Court does not find any substance in this contention also and the same is rejected.”

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14. In the above case, it has been clearly and categorically laid down that disciplinary authority with regard to judicial officers is the High Court and it is the High Court, which can initiate the disciplinary proceedings against judicial officers. Although, with regard to dismissal, removal or reduction in rank or termination of services of judicial officers, the High Court becomes the recommending authority and it is the Governor, who is to issue the orders.

15. Learned counsel for the petitioner has placed reliance on a Constitution Bench judgment of this Court in **Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, (1979) 2 SCC 34**. The above case was a case of employees of a High Court. This Court had occasion to interpret the scope of Article 235. In paragraph 40 of the judgment, few incidents of control vested in the High Court were enumerated. Paragraph 40 is as follows:

“40. The interpretation and scope of Article 235 has been the subject of several decisions of this Court. The position crystallised by these decisions is that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and effective in operation. It comprehends a wide variety of matters. Among others, it includes:

(a) (i) Disciplinary jurisdiction and a complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal, reduction in rank of District Judges, and initial posting and promotion to the cadre of District Judges. In the exercise of this control, the High Court can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal, subject, however, to the conditions of service, and a right of appeal, if any, granted thereby and to the giving of an opportunity of showing cause as required by Article 311(2).

(ii) In Article 235, the word ‘control’ is accompanied by the word “vest” which shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court, being exclusive, and not dual, an inquiry into the conduct of a member of judiciary can be held by the High Court alone and no other authority. (State of West Bengal v. Nripendra Nath Bagchi (supra); Shamsher Singh v.

- A State of Punjab (1974) 2 SCC 831; Punjab and Haryana High Court v. State of Haryana (sub nom Narendra Singh Rao, (1975) 1 SCC 831).
- (iii) Suspension from service of a member of the judiciary, with a view to hold a disciplinary inquiry.
- B (b) Transfers, promotions and confirmation of such promotions of persons holding posts in the judicial service, inferior to that of District Judge. (State of Assam v. S.N. Sen, (1971) 2 SCC 899, State of Assam v. Kuneswar Saikia, (1969) 3 SCC 505).
- C (c) Transfers of District Judges [State of Assam v. Ranga Muhammad (supra); Chandra Mouleshwar v. Patna High Court (supra)].
- (d) Recall of District Judges posted on ex-cadre posts or on deputation on administrated posts. (State of Orissa v. Sudhansu Sekhar Misra, AIR 1968 SC 647).
- D (e) Award of Selection grade to the members of the judicial service, including District Judges it being their further promotion after their initial appointment to the cadre. (State of Assam v. Kuseswar Saikia (supra).
- E (f) Confirmation of District Judges, after their initial appointment or promotion by the Governor to the cadre of District Judges under Article 233, on probation or officiating basis. [Punjab & Haryana High Court v. State of Haryana (supra)].
- (g) Premature or compulsory retirement of Judges of the District Court and of Subordinate Courts (State of U.P. v. Batuk Deo Pati Tripathi and Anr. (supra).”
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16. In the above case also, this Court held that the disciplinary jurisdiction vests in the High Court which can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal. The High Court can also suspend a member of the judiciary. Insofar as dismissal or removal is concerned, the said orders are required to be passed by the Governor on the recommendation of the High Court. The fact that the orders of dismissal or removal are issued by the approval of the Governor in no manner denude the disciplinary control of the High Court.

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17. Another judgment relied on by the learned counsel for the petitioner is **State of Tamil Nadu Rep. by Secretary to Govt.(Home) Vs. Promod Kumar IPS and Another, AIR 2018 SC 4060**. The above was a case of the member of Indian Police Service. This Court had occasion to consider the provisions of All India Services (Discipline and Appeal) Rules, 1969 in the context of member of Indian Police Service. Learned counsel for the petitioner has placed reliance on paragraphs 18 and 19, which are to the following effect:

“18. Rule 8(4) of the All India Service (Discipline and Appeal) Rules, 1969 also mandates that the disciplinary authority shall “draw up or cause to be drawn up” the charge memo. We see no reason to take a view different from the one taken by this Court in B.V. Gopinath (AIR 2014 SC 88)(supra). We also see no substance in the submission made by the Senior Counsel for the State that the said judgment needs reconsideration. Assuming that Mr. Giri is right in his submission that the initiation of disciplinary proceedings and issuance of charge memo are at the same stage, the mandatory requirement of Rule 8 which provides for the charge memo to be drawn by the disciplinary authority cannot be ignored. We reject the submission on behalf of the Appellant that Gopinath’s case can be distinguished on facts. We are not in agreement with the contention of the Appellant that the business Rules and standing orders of the State of Tamil Nadu are quite different from the office orders and circulars issued by Union of India which formed the basis of the judgment in Gopinath’s case. A close reading of the said judgment would disclose that reliance on the office note was only in addition to the interpretation of the Rule.

19. It is also settled law that if the Rule requires something to be done in a particular manner it should be done either in the same manner or not at all- Taylor v. Taylor (1875) 1 Ch. D. 426, 431. In view of the mandatory requirement of Rule 8(4) and the charge memo being drawn up or cause to be drawn up by the disciplinary authority is not complied with, we are of the considered opinion that there is no reason to interfere with the judgment of the High Court on this issue. The only addition we would like to make is to give liberty to the disciplinary authority to issue a charge memo afresh after taking approval from the disciplinary authority.”

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A 18. In the above case, charge memo was not drawn by the disciplinary authority, hence, this Court approved the decision of the High Court quashing charge-sheet. The above case is not applicable in the present case. The petitioner in the present case is a member of Judicial Service for which disciplinary authority is the High Court.

B 19. The submission, which has been pressed by the petitioner is that in view of Act, 2013 there being an Inquiry Report by Internal Complaints Committee as envisaged by Sections 11 and 13, the High Court could not have taken a decision to initiate the inquiry or to suspend the petitioner. The Act, 2013 was to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. Chapter II of Act, 2013 deals with constitution of Internal Complaints Committee. Chapter IV deals with complaint. In Chapter IV, one of the sections is Section 11, which deals with inquiry into complaint. Section 11 of the Act is as follows:-

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

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

G Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity

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of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee. A

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20. Chapter V deals with inquiry into complaint and Section 13 deals with inquiry report, which is to the following effect:- B

“13. Inquiry Report.—(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties. C

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter. D

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be— E

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed; F

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15: G

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman: H

A Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

B (4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.”

21. The Act, 2013 is a parliamentary legislation, the preamble of which outlines the necessity of legislation, which is to the following effect:-

C “An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.”

D 22. The provisions of the Act, complaint mechanism and mechanism for constitution of the Internal Complaints Committee, mechanism to inquire the complaint are all for protection of dignity and welfare of women at workplace. The provisions of Sections 11 and 13 in no manner affect the control of the High Court under Article 235, which it has with respect to judicial officers as noted above. The power to suspend the judicial officer vests in the High Court. The Full Court of the High court is in no manner precluded from initiating disciplinary inquiry against the petitioner and placing the petitioner under suspension on being satisfied that sufficient material existed. The High Court in its meeting dated 19.07.2016 has resolved to send the complaint of the employee to the Internal Complaints Committee and the Internal Complaints Committee having opined that inquiry need to be held, further steps were taken in accordance with Act, 2013. We, thus, are of the view that there is no error in the decision of the Full Court dated 13.07.2016 to suspend the petitioner and initiate the inquiry proceedings against the petitioner.

Issue No.3

G 23. The submission on which much emphasis has been made by the petitioner is that the copy of the Report dated 05.11.2016 referred to as a Preliminary Inquiry Report by the High Court has not been supplied to the petitioner by which he has been denied right to appeal. With regard to Preliminary Inquiry Report dated 05.11.2016, in paragraph Nos. 48 and 49, the High Court has made following assertions:-

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“48-49. The contents of para 48-49 are wrong and denied. The Petitioner is under the erroneous belief that the report dated 05.11.2016 which is only a Preliminary Inquiry Report should have been made available to him. That the inquiry has been conducted strictly in compliance with the procedure laid down in All India Services (Discipline & Appeal) Rules, 1965 and Office Memorandum dated 16.07.2015 issued by Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, Govt. of India. As per the said Office Memorandum, the ICC firstly conducted preliminary investigation/inquiry and then submitted its Preliminary Inquiry Report dated 05.11.2016 before the Disciplinary Authority. There is no provision to provide the copy of Preliminary Inquiry Report to the Delinquent. It is also pertinent to mention here that the Petitioner had been provided with a copy of the Inquiry Report dated 09.03.2018 submitted by the Inquiring Authority after conducting regular inquiry as per the procedure laid down in the All India Services (Discipline & Appeal) Rules, 1969, with a direction to submit his written representation or submissions, if he so desires, against the findings of the Inquiring Authority. However, instead of submitting his written representation or submissions, the Petitioner chose to file the instant writ petition before this Hon’ble Court. Thus, it is made clear here that there was no discrepancy in the Preliminary Inquiry/investigation by the ICC. The Report dated 05.11.2016 was a Preliminary Inquiry Report the purpose of which is only to satisfy the Disciplinary Authority as to whether any prima facie case is made out against the Petitioner. The Full Court, after considering the Preliminary Inquiry Report dated 05.11.2016, resolved vide its decision dated 16.11.2016 to initiate disciplinary proceedings for major penalty under Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969 against the Petitioner.”

24. In view of the above, it is clear that Preliminary Inquiry Report dated 05.11.2016 did not contain any findings on allegations made against the petitioner, Preliminary Inquiry Report only opined that inquiry should be held. The Inquiry Report, which has been referred to in Section 13 is an Inquiry Report, which has been submitted by Internal Complaints Committee after completion of the inquiry. In the present case, the Inquiry Report by Internal Complaints Committee is dated 09.03.2018,

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A which has been admittedly supplied to the petitioner, the right of appeal given against the recommendation made under sub-section(2) or sub-section(3) of Section 13 are appealable under Section 18 of the Act. Section 18 of the Act is as follows:-

B “**18.Appeal.**— (1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or subsection (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

D (2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.”

25. Thus, the right of appeal is given to an aggrieved person only when report is submitted under Section 13 to the employer. Section 13(3) contemplates the report of Internal Complaints Committee when it “arrives at the conclusion that the allegation against the respondent has been proved”. It is not the case of any of the parties that the report of the Committee dated 05.11.2016 is the report where allegation against the petitioner has been proved. Even under Section 11(1) in the second proviso, the only contemplation is to make available a copy of the findings. Thus, when the report in which there are no findings, parties are not entitled to have the copy. High Court in its counter affidavit has pleaded that the Report dated 05.11.2016 was not a report containing any findings against the petitioner rather only opinion was expressed that disciplinary inquiry be initiated against the petitioner. We, thus, are of the view that no prejudice can be held to be caused to the petitioner by non-supply of the Preliminary Inquiry Report dated 05.11.2016. The copy of memo of charge dated 23.02.2017 has been brought on the record, which also clearly indicates that the charge memo does not refer to Preliminary Inquiry Report dated 05.11.2016. Thus, no prejudice can be said to have been caused to the petitioner by non-supply of Report dated 05.11.2016. We, thus, do not accept the submission of learned counsel for the petitioner

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that due to non-supply of Preliminary Inquiry Report dated 05.11.2016, A
the proceedings have been vitiated.

26. Before we close, we once more make it clear that with regard
to charge memo dated 23.02.2017, inquiry conducted by Internal
Complaints Committee culminating into Report dated 09.03.2018, it is
open for the petitioner to raise all pleas of facts and law before the B
appropriate authority. This Court has only considered limited issues as
pressed by the petitioner as indicated above. Apart from above, all
questions and issues are left open to both the parties. Subject to
observations and liberty as above, the Writ Petition is dismissed.

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Divya Pandey

Writ Petition dismissed.