

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20<sup>TH</sup> DAY OF JULY, 2021

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.15070 OF 2020 (S-RES)

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**BETWEEN**

DR.ARABI U.,  
S/O LATE MOIDEEN KUTTY BEARY  
AGED ABOUT 60 YEARS  
PROFESSOR, DEPARTMENT OF ECONOMICS  
MANGALORE UNIVERSITY  
MANGALAGANGOTRI  
MANGALURU – 574 199 AND ALSO  
RESIDING AT A.F.COTTAGE  
D.NO.2-38(8)  
MARATHI MOOLE  
MANJANADY VILLAGE  
D.K.DISTRICT – 575 018.

... PETITIONER

(BY SRI SUSHIL KUMAR JAIN, SR. ADVOCATE A/W  
SMT.REVATHY ADINATH NARDE, ADVOCATE  
(VIDEO CONFERENCING))

**AND**

1. THE REGISTRAR  
MANGALORE UNIVERSITY  
MANGALAGANGOTRI  
KONAJE  
MANGALURU – 574 199.
2. THE CHAIRPERSON/PRESIDING OFFICER  
THE INTERNAL COMPLAINTS COMMITTEE(ICC)

DEPARTMENT OF BIOSCIENCES  
MANGALORE UNIVERSITY  
MANGALAGANGOTRI  
MANGALURU – 574 199.

... RESPONDENTS

(BY SRI MADHUSHUDHAN R. NAIK, SR. ADVOCATE  
A/W SRI T.P.RAJENDRA KUMAR SUNGAY, ADVOCATE  
FOR C/R- 1 (VIDEO CONFERENCING)  
SMT.SHRIVIDYA ZIRALI, ADVOCATE FOR  
SRI SHIVAPRASAD SHANTANAGOUDAR, ADVOCATE  
FOR R2 (PHYSICAL HEARING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO  
QUASH THE SECOND SHOW CAUSE NOTICE DTD:  
05.11.2020 VIDE ANNEX-AA AS ILLEGAL,  
UNCONSTITUTIONAL AND VIOLATIVE OF ART 14 AND 16  
OF THE CONSTITUTION OF INDIA AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND  
RESERVED FOR ORDERS ON 16.07.2021, COMING ON  
FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE  
FOLLOWING :-

**ORDER**

The petitioner in this writ petition calls in question  
second show cause notice dated 5-11-2020 seeking the  
petitioner to show cause as to why penalty of dismissal

from service should not be imposed upon him based upon the report of Internal Complaints Committee<sup>1</sup>.

*2. Shorn of unnecessary details, facts appertains are as follows:-*

The petitioner joined the service of Mangalore University<sup>2</sup> in the Department of Economics in the year 1983 and claims to have been regularized in service in the year 1995 and promoted to higher echelons of office and at the relevant point in time was holding the post of Chairman of Department of Economics and presently working in the cadre of Professor at the Department of Economics in the University. When the petitioner was functioning as Chairman of Department of Economics, on 22-04-2018 a complaint was lodged by a project student before the Karnataka State Commission for Women alleging sexual harassment by the petitioner. This was communicated back to the University by the

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<sup>1</sup> *'Committee' for short*

<sup>2</sup> *'University' for short*

Commission to look into the complaint and take appropriate action. The same was also complained to the National Commission for Women who in turn communicated for action to be taken on the complaint to the Vice-Chancellor of the University.

3. This led to the complaint being converted into a complaint under Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013<sup>3</sup>. The petitioner gave his reply to the complaint on 6-08-2018 but not being satisfied with the reply, the University placed the complaint for its enquiry before the Committee constituted in terms of the Act. On conduct of proceedings, the Committee held the petitioner guilty of the allegations in terms of the complaint registered under the Act. The syndicate resolving to accept the report of the Committee resulted in the impugned second show cause notice issued to the

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<sup>3</sup> *'Act' for short*

petitioner. The preamble to the second show cause notice narrates that the report of the Committee was placed before the Syndicate and the Syndicate proposes to impose major punishment of dismissal from service by giving 15 days clear notice to the petitioner. The impugned order while narrating that a notice is to be given to the petitioner placed the petitioner under suspension, invoking the power under the Statutes. It is this order that is called in question in the subject writ petition.

4. Heard Sri Sushil Kumar Jain, learned senior Advocate along with Smt. Revathy Adinath Narde, learned Advocate for the petitioner, Shri Madhusudhan R.Naik, learned senior Advocate along with Sri T.P.Rajendra Kumar Sungay, learned Advocate for respondent No.1 and Smt. Shrividhya Zirali, learned Advocate for Sri Shivaprasad Shantanagoudar, Advocate for respondent No.2.

5. The learned senior counsel appearing for the petitioner would submit that the impugned second show cause notice decides to dismiss the petitioner from service and a separate order places him under suspension. The proposal to dismiss the petitioner from service is on the basis of a report of the Committee, without holding any inquiry as required under the Service Rules, as the penalty of dismissal can be imposed only after following the procedure under the Service Rules and would place reliance upon the judgments of the Apex Court in the cases of **DR. VIJAYAKUMARAN C.P.V. v. CENTRAL UNIVERSITY OF KERALA AND OTHERS<sup>4</sup>** and **RUCHIKA SINGH CHHABRA v M/s AIR FRANCE INDIA AND ANOTHER<sup>5</sup>**.

6. On the other hand, learned senior counsel Sri Madhusudhan R.Naik representing the University takes this Court through the provisions of the Act and

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<sup>4</sup> (2020) 12 SCC 426

<sup>5</sup> 2018 SCC OnLine Delhi 9340

judgments of the Apex Court in the case of **VISHAKA AND OTHERS v. STATE OF RAJASTHAN AND OTHERS**<sup>6</sup>; **MEDHA KOTWAL LELE AND OTHERS v. UNION OF INDIA AND OTHERS**<sup>7</sup> and **SEEMA LEPCHA v. STATE OF SIKKAM AND OTHERS**<sup>8</sup> and would contend in terms of the judgment in the case of **Medha Kotwal Lele** the report of the Committee is itself material enough to impose penalty obtaining in the Service Rules against an employee who is accused and found guilty of sexual harassment. He would submit that the statute which depicts procedure for imposition of penalty has not been amended with regard to inclusion of cases of sexual harassment. He would also submit that the petitioner has replied to the show cause notice and rushed to this Court even before any decision could be taken after considering his reply to

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<sup>6</sup> (1997) 6 SCC 241

<sup>7</sup> (2013) 1 SCC 297

<sup>8</sup> (2013) 11 SCC 641

the show cause notice. He would contend that the writ petition ought to be dismissed as premature.

7. I have given my thoughtful consideration to the submissions made by the respective learned senior counsel and have perused the material on record. In furtherance whereof, the only issue that calls for my consideration is,

***Whether the proposed penalty of dismissal from service in the second show cause notice could have been proposed to be imposed without at the outset, following the procedure stipulated for imposition of such penalty as obtaining under the Service Rules?***

**POSITION IN LAW:**

***Pre- Legislation:***

8. Since the entire issue springs from a complaint in terms of the Act, the genesis of the Act is required to

be noticed. The Apex Court taking note of the fact that the then prevailing civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in workplaces and that enactment of such legislation will take considerable time, feeling it necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women, gave a slew of directions in the form of guidelines as to what would amount to sexual harassment and the manner to deal with the same. At para-18 the said judgment further directed that the guidelines stipulated in the judgment of **Vishaka** would be strictly observed in all work places and these directions would be binding until suitable legislation is enacted to occupy the field. Paragraph-18 reads as follows:

*“18. Accordingly, we direct that the above guidelines and norms would be strictly*

*observed in all workplaces for the preservation and enforcement of the right to gender equality of the working women. **These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These writ petitions are disposed of, accordingly.***

Though the guidelines depicted in **Vishaka** was followed at work places no legislation was brought out as directed in the said judgment. This led to the judgment of the Apex Court in the case of **Medha Kotwal Lele and Seema Lepcha** (*supra*) where the Apex Court held in **Medha Kotwal Lele** as follows:

*“41. The implementation of the guidelines in Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] has to be not only in form but substance and spirit so as to make available safe and secure environment to women at the workplace in every aspect and thereby enabling the working women to work with*

*dignity, decency and due respect. There is still no proper mechanism in place to address the complaints of sexual harassment of the women lawyers in Bar Associations, lady doctors and nurses in the medical clinics and nursing homes, women architects working in the offices of the engineers and architects and so on and so forth.*

42. *In Seema Lepcha [Seema Lepcha v. State of Sikkim, (2013) 11 SCC 641] this Court gave the following directions:*

*“(i) The State Government shall give comprehensive publicity to the notifications and orders issued by it in compliance with the guidelines framed by this Court in Vishaka case [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] and the directions given in Medha Kotwal case [Medha Kotwal Lele v. Union of India, (2013) 1 SCC 312] by getting the same published in the newspapers having maximum circulation in the State after every two months.*

*(ii) Wide publicity be given every month on Doordarshan Station, Sikkim about various steps taken by the State Government for implementation of the guidelines framed in Vishaka's case [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] and the directions given in Medha Kotwal case [Medha Kotwal Lele v. Union of India, (2013) 1 SCC 312].*

*(iii) Social Welfare Department and the Legal Service Authority of the State of Sikkim shall also give wide publicity to the notifications and orders issued by the State Government not only for the government departments of the State and its agencies/instrumentalities but also for the private companies.”*

*43. As the largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by*

*Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence - domestic violence, sexual assault, sexual harassment at the workplace, etc. - and provide new initiatives for education and advancement of women and girls in all spheres of life. After all they have limitless potential. Lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population—the women.*

**44. In what we have discussed above, we are of the considered view that guidelines in Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place:**

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

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

In the judgment of **Medha Kotwal Lele** the Apex Court at paragraph 45 holds as follows:

*“45. We are of the view that if there is any non-compliance or non-adherence to*

*Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] guidelines, orders of this Court following Vishaka [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] and the above directions, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such State would be in a better position to effectively consider the grievances raised in that regard.”*

The Apex Court at Paragraph 44 of the afore extracted judgment clearly holds that for the guidelines that are being issued in the said judgment was on the ground that the directions given in **Vishaka** should not remain symbolic and in that light further directions were given in the case before the Apex Court in **Medha Kotwal Lele**. Again the guidelines in terms of the said observations at paragraph 45 stipulated in **Vishaka** were to be strictly followed and it was open to the aggrieved person to approach respective High Courts for

effectively considering the grievances raised in this regard. Therefore, it cannot but to be held that the directions given by the Apex Court in the afore extracted judgments of **Vishaka** and **Medha Kotwal Lele** would be in operation, till a legislation is promulgated by the Government.

**Post- Legislation:**

9. In terms of the judgment (*supra*) the Apex Court directed that the guidelines issued therein, both in the case of **Vishaka** and **Medha Kotwal Lele** were to be binding and enforceable in law until an appropriate legislation is brought in place to occupy the field concerning the issue. The Bill was ratified on 25-01-1993. The Bill proposed to enact a persuasive legislation to provide for safe and secure environment to every woman free from all sexual harassment by fixing responsibility on the employer. Later, the Government of

India promulgated the Act and brought it into force on April 22, 2013. The Act was promulgated to make appropriate provisions for giving effect to the elimination of all forms of discrimination/harassment against women in its workplace.

**The Act:**

10. Certain provisions of the Act which are germane to be noticed herein are extracted hereunder for the purpose of quick reference:

*“4(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”:*

*Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.*

...                      ...                      ...                      ...

**9(1)** *Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:*

*Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:*

*Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.*

... ..

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

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

*complaint or, as the case may be, forward the complaint to the police:*

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

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

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

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

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

*(c) any other matter which may be prescribed.*

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

... ..

**13(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.*

*(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.*

***(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—***

- (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;***
- (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:*

*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:*

*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.*

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

... ..

*“18 (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 sub-section (1) or sub-section (2) of Section 14 or Section 17 or non-implementation of such recommendations may prefer an appeal to the 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.*

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

... ..

*19. Every employer shall –*

... ..

***(i) treat sexual harassment as a misconduct under the service rules***

***and initiate action for such misconduct.”***

Section 9 of the Act gives a right to any aggrieved woman to make a complaint in writing against any sexual harassment at work place to the Committee if constituted or a Local Committee in the absence of the Committee within 3 months from the date of the incident; Section 10 provides that the Committee may before initiating action under Section 11, request the aggrieved person to settle the matter between the complainant and the aggrieved person; Section 12 provides for steps that may be taken by the Committee during the pendency of the inquiry; Section 13 (1) deals with completion of inquiry under the Act and supply copy of the report of its findings to the employer and such report to be made available to the concerned party; Section 13(2) deals with recommendation to be made by the Committee after conclusion of the inquiry and if the allegations are not proved, the Committee may

recommend no action to be taken; Section 13(3) deals with a situation where the Committee arrives at a conclusion that the allegations against the employee had been proved, it would recommend action to be taken by the employer against the employee by treating sexual harassment as a misconduct in accordance with the provisions of Service Rules; Section 13(4) obliges the employer to act on the basis of the recommendations of the Committee; Section 18 provides that an aggrieved person on the recommendation of any of the aforesaid clauses of Section 13 may prefer an appeal to the Court or Tribunal in such manner as may be prescribed; Section 19 of the act deals with duties of the employer; Section 19(i) provided that the employer has a duty to treat sexual harassment as a misconduct under the Service Rules and initiate action for such misconduct.

11. It is not in dispute that no separate disciplinary Rules are framed by the University for

deciding the allegations involving sexual harassment. On a conjoint reading of the aforesaid provisions of the Act, Sections 11, 13(3) and 13(4) in particular, mandate that once there is a complaint before the Committee, the Committee should proceed in terms of the Service Rules applicable to the employee where Service Rules exist in a manner as may be prescribed in consonance with the principle of natural justice. Rules have been framed in terms of the Act namely, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013<sup>9</sup>. Rules 7 and 9 are germane for consideration of the issues in the lis and are extracted for the purpose of quick reference:

***“7. Manner of inquiry into complaint.—(1) Subject to the provisions of Section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents***

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<sup>9</sup> ‘Rules’ for short)

*and the names and addresses of the witnesses.*

*(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.*

*(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).*

*(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.*

*(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:*

*Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.*

*(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.*

*(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present.*

8. xx xx xx

**9. Manner of taking action for sexual harassment.**—*Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or*

*increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.”*

On a coalesce of the provisions of the Act and the Rules what would unmistakably emerge is, where the Service Rules exist, the report of the Committee becomes a fact finding report or a preliminary report, with regard to the allegation of sexual harassment and the employer becomes duty bound to proceed under the Service Rules before imposing any major penalty. It is on the basis of the aforesaid Act and the Rules the case at hand will have to be noticed.

***Service Rules of the University:***

12. Since there are no separate disciplinary Rules for these allegations, the Rules that are obtaining in the University which deal with imposition of penalty for any misconduct, are the Statutes Governing Classification,

Control and Appeal Rules of Employees of Mangalore University<sup>10</sup>. The Rules that are germane for consideration of the list are extracted hereunder for the purpose of quick reference:

*“7. **Nature of penalties:** one or more of the following penalties for good and sufficient reasons may be imposed on the employees of the University.*

- i) fine in the case of Group-D employees;*
- ii) censure;*
- iii) recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders*
- iv) (a) withholding of increments without cumulative effect.*  
*(b) withholding of increments with cumulative effect.*  
*(c) withholding of promotion*
- v) (a) reduction to a lower stage in the time scale of pay for a period with a specific direction as to whether or not the employee will*

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<sup>10</sup> ‘Service Rules’ for short

*earn increments of pay during the period of such reduction and whether on the expiry of such period of penalty, the reduction will or will not have the effect of postponing the future increments of his/her pay;*

*(b) Reduction to a lower time scale of pay, grade, post or service which shall, unless otherwise directed, be a bar to the promotion to the time scale of pay grade, post or service from which he/she was reduced with or without further directions regarding;*

*(i) Seniority and pay in the scale of pay, grade, post or service to which he/ she is reduced;*

*(ii) Conditions of restoration to the scale of pay from which he/she was reduced; and his/her seniority and pay on such restoration to that*

scale of pay, grade, post or service;

- v) *Compulsory retirement;*
- vi) *Removal from service which shall not be a disqualification for future employment;*
- vii) *Dismissal from service which shall ordinarily be a disqualification for future employment.'***

... ..

**11. Procedure for imposing major penalties:-**

- i) *No order imposing any of the major penalties specified in sub rule (iv)(b) to (viii) of rule 7 shall be made except after an inquiry held as far as may be, in the manner provided in this rule and rule 11-A***
- ii) *Whenever the Syndicate is of the opinion that there are grounds for inquiring into the truth of imputation of misconduct or misbehavior against an*

*employee, it may itself inquire into or appoint the Vice-Chancellor or any other Officer to inquire into the truth of the matter. Such cases of misbehavior in case of Group A, Group B and Group C employees should be reported by the Vice-Chancellor to the Syndicate and in other cases the Vice-Chancellor can take action to conduct necessary inquiry.*

***Explanation:*** *Where the Disciplinary Authority itself holds the inquiry, any reference in sub-rule(vii) to sub-rule(xx) and in sub-rule (xxii) , to the Inquiring Authority shall be construed as a reference to the Disciplinary Authority.*

*iii) Where it is proposed to hold an inquiry against an employee under this rule and rule 11-A the disciplinary authority i.e. Syndicate shall draw up or cause to be drawn up:*

*i) the substance of the imputations of misconduct or misbehaviour*

*into definite and distinct articles of charge;*

*ii) a statement of the imputation of misconduct in support of each article of charge, which shall contain.*

*a) a statement of all relevant facts including any admission or confession made by the employee;*

*b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.*

*iv) The Disciplinary Authority (i.e., the Syndicate) shall deliver or cause to be delivered to the employee a copy of the articles of charges, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the employee to submit,*

*within such time as may be specified, a written statement of his defence and to state whether he/she desires to be heard in person.*

*v) a) On receipt of the written statement of defence, the Syndicate /the Vice- Chancellor in case of Group D employees or any other authority appointed by it may inquire into such of the articles of charges as are not admitted or if it considers it necessary so to do, appoint under sub rule(2) and Inquiring Authority for the purpose and where all the articles of charge have been admitted by the employee in his written statement of defence, the Disciplinary Authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 11-A*

*b) If no written statement of defence is submitted by the employee, the Syndicate may inquire into the articles of charge, or may if it considers necessary to do so may appoint an inquiring authority for the purpose.*

*c) Where the Syndicate/Vice-Chancellor itself inquires into any articles of charge or appoints an Inquiring Authority for holding an inquiry into such charge it may by an order appoint an Officer or a legal practitioner to be known as Presenting Officer to present on its behalf the case in support of the articles of charge.*

*vi) The disciplinary authority shall where it is not the Inquiring Authority, forward or cause to forward to the Inquiring Authority :-*

- a) *a copy of the articles of charge and statement of imputations of misconduct or misbehaviour;*
  - b) *a copy of the written statement of defence, if any, submitted by the employee;*
  - c) *a copy of the statements of witnesses, if any;*
  - d) *evidence proving the delivery of the documents to the employee and*
  - e) *a copy of the order appointing the legal Practitioner as 'Presenting Officer'.*
- vii) *The employee shall appear in person before the Inquiring Authority on a fixed date and at a fixed time within ten working days from the date of receipt of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the Inquiring Authority may, by a notice in writing specify in*

*this behalf or within such further time, not exceeding ten days, as the Inquiring Authority may allow.*

- viii) The employee may take the assistance of any other University employee (or a retired University employee) to present the case on his/her behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner, or, the Disciplinary Authority, having regard to the circumstances of the case, so permits:*

*(Provided that if the retired University employee is also a legal practitioner, the employee shall not engage such person unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner or the Disciplinary Authority having regard to the circumstances of the case, so permits.)*

- ix) If the employee who has not admitted any of the articles of charge in his*

*written statement of defence or has not submitted any written statements of defence, appears before the Inquiring Authority, such authority shall ask him whether he is guilty or has any defence to make. If he pleads guilty to any of the articles of charge or has any defence to make, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the employee thereon.*

- x) The Inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the employee pleads guilty.*
  
- xi) The Inquiring Authority shall, if the employee fails to appear within the specified time or refuses or omits to plead require the Presenting Officer to produce evidence by which he proposes to prove the articles of charge and shall adjourn the case to a later date not exceeding thirty days, after recording*

*an order that the employee may for the purpose of preparing his defence:*

- a) inspect within five days of the order or within such further time not exceeding five days as the Inquiring Authority may allow, the documents specified in the list referred to in sub rule(iii);*
- b) submit a list of witnesses to be examined on his behalf;*
- c) apply orally or in writing to inspect and take extracts of the statements, if any of witnesses mentioned in the list referred to in sub-rule iii The Inquiring Authority shall permit him to take such extracts as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the Disciplinary Authority;*

- d) *give a notice within ten days of the order or within such further time not exceeding ten days as permitted by the Inquiring Authority for the discovery or production of any documents which are in the possession of the University but not mentioned in the list referred to sub rule 3*

*Provided that the employee shall indicate the relevance of the documents required by him to be discovered or produced by the University.*

- xii) *The Inquiring Authority shall on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the concerned authority in whose custody or possession the documents are kept with a requisition for the production of the document by such date as may be specified in such requisition:*

*Provided that the Inquiring Authority may, for reasons to be recorded by it in writing, refuse*

*requisition of such of the documents as are, in its opinion, not relevant to the case.*

*xiii) On receipt of the requisition referred to in sub-rule (xii) every authority having the custody or possession of the requisitioned documents shall produce the same before the Inquiring Authority:*

*Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the state, it shall inform the Inquiring Authority accordingly and the Inquiring Authority shall, on being so informed communicate the information to the employee and withdraw the requisition made by it for the production or discovery of such documents.*

*xiv) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be*

*produced on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.*

- xv) If it shall appear necessary before the close of the case on behalf of the disciplinary authority the Inquiring Authority if found necessary may at its discretion allow the presenting Officer to produce evidence not included in the list given to the employee or may itself call for new evidence or recall and re-examine any witness. In such case, the employee shall be entitled to have a copy of the list of further evidence*

*proposed to be produced if he demands it.*

*An adjournment of the Inquiry for three days excluding the date of adjournment may be allowed for this purpose at the request of the employee. The Inquiring Authority shall give the employee an opportunity of inspecting such documents before they are taken on the record. The Inquiry Authority may also allow the employee to produce new evidence if found necessary in the interest of justice.*

*NOTE: New evidence shall not be permitted or called for*

*Nor witnesses shall be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced.*

*xvi) When the case for the Disciplinary Authority is closed, the employee shall*

*be required to state his defence, orally or in writing as he may prefer. The oral defence shall be signed by the employee after it is recorded. A copy of the statement of defence shall be given to the Presenting Officer, if any appointed.*

*xvii) The evidence on behalf of the employee shall then be produced. The employee may examine himself if he so prefers. The witnesses produced by the employee shall then be examined. They shall be liable for cross examination, re-examination and examination by the Inquiring Authority according to the provisions prescribed above.*

*xviii) The Inquiring Authority, after the employee closes his case, shall generally question the employee on the circumstances as appearing against him in the evidence for the purpose of enabling him to explain any circumstances as appearing against him.*

- xix) The Inquiring Authority may, hear the Presenting Officer if any, appointed after the completion of the production of evidence. He may also hear the employee. He may permit both parties to file written briefs of their respective cases if they so desire.*
- xx) If the employee does not submit the written statement of defence on or before the fixed date or does not appear in person before the Inquiring Authority or refuses to comply with the provisions of this Statute at any stage of inquiry the Inquiring Authority may hold the Inquiry ex-parte.*
- xxi) (a) After the inquiry is conducted, if the authority competent to impose any of the minor penalties specified in clauses (i) to (iv)(a) of rule 7, is of the opinion that major penalties specified in sub rule (iv)*  
*(b) to (viii) should be imposed on the employee he shall forward records of the Inquiry to the Syndicate*

*recommending the imposition of any of the above mentioned penalties.*

*(b) The Syndicate may act on the evidence on the record or may, in the interest of justice recall the witnesses and examine, cross-examine and re-examine them and then impose on the employee, such penalties as it may deem fit in accordance with this Statute.*

*xxii) If there is any change in the Inquiring Authority during the course of inquiry of any case the succeeding Inquiring Authority may act on the evidence recorded by his predecessor. He may however further examine, cross-examine the witnesses if so desired by him in the interest of justice.*

*xxiii) i) After the conclusion of the Inquiry, a report shall be prepared and it shall contain:*

- a) *the articles of charge and the statement of the imputations of misconduct or misbehavior;*
- b) *the defence of the employee in respect of each article of charge;*
- c) *an assessment of the evidence in respect of each article of charge;*
- d) *the findings on each article of charge and the reasons therefor.*

**EXPLANATION:** *If in the opinion of the Inquiring Authority, the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge. Such article of charge shall not however be recorded unless the employee has either admitted the facts on which it is based or has had a reasonable opportunity of defending himself against such article of charge.*

- ii) The Inquiring Authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority, the records of inquiry, which shall include:***
- a) the report prepared by the Inquiring Authority;***
  - b) the written statement of defence, if any submitted by the employee;***
  - c) the oral and documentary evidence produced in the course of the inquiry;***
  - d) written briefs, if any, filed by the Presenting Officer or the employee or both during the course of the inquiry; and***
  - e) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry.”***

*(Emphasis added)*

In terms of the afore-extracted Rules, no penalty can be imposed against an employee except after following the procedure stipulated in terms of the Rules as afore-extracted. Dismissal from service is one of the major penalties depicted under Rule 7. Rule 11 deals with procedure for imposing penalties and begins with a *non-obstante* clause that no order imposing any of the major penalties specified in sub-rule 4(b) to 8 of which dismissal from service is a part, can be imposed, except after following the procedure stipulated under the aforesaid Rules. Rule 11-A deals with action on the Inquiry Report. These procedures have to be followed if an employee is to be imposed any of the penalties under the Rules. A reading of Section 9(i) of the Act in juxtaposition with the aforesaid Rules makes it unmistakably clear that the Act itself directs that the case of sexual harassment would be treated as a misconduct under the Service Rules and action to be taken as such. If the Act directs it to be treated as a

misconduct under the Service Rules that will have to be dealt with under the Rules (*supra*) and procedure to be followed prior to imposition of such penalty as found in the Service Rules.

13. In the teeth of the aforesaid provisions of the Act and the Service Rules, the impugned second show cause notice is required to be noticed. The second show cause notice reads as follows:-

**“SECOND SHOW CAUSE NOTICE”**

***Sub: Complaint under the Section 9 of the Sexual Harassment of Woman at workplace –Complaint of a student (name not shown but available in records) of the Department of Economics.***

*Ref: 1. Complaint dated 23-04-2018 filed before the Karnataka State Commission for Women.*

2. *Notice dated 25-07-2018 issued by Internal Complaints Committee of Mangalore University.*
3. *Your reply to the notice dated 16-08-2018.*
4. *Letter dated 20-12-2018 of the Internal Complaints Committee (ICC) forwarding Report and Findings.*
5. *Your representation dated 30-01-2019 on the report and findings.*
6. *Resolution of the Syndicate dated 28-10-2020 proposing punishment.*

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*As you are well aware, you were issued with notice dated 25-07-2018 by Internal Complaints Committee (ICC) as a student (name not shown but available in records being victim of sexual harassment) had lodged a complaint against you alleging act of sexual harassment.*

*You have submitted your reply and the Internal Complaints Committee (ICC) has conducted the proceedings of enquiry in accordance with law as mentioned above. Accordingly, after holding the enquiry, Internal Complaints Committee (ICC) has submitted its report and findings, the copy of the same was furnished to you. On receipt of the same, you have submitted your written representation dated 30-01-2019.*

***The Syndicate has perused all the documents, statements, your representation and it is of the opinion that the charge of sexual harassment leveled against you stands proved at the enquiry and the report and findings of the Internal Complaints Committee (ICC) is just and proper. The Syndicate has concurred with the report and findings dated 20-12-2018 of Internal Complaints Committee (ICC). That by considering the gravity of misconduct committed which is proved against you; it has proposed to impose punishment of dismissal to you.***

*You are furnished with the copy of the resolution dated 28-10-2020 of the Syndicate.*

*You are hereby called upon to submit your representation if any, to the proposed punishment on or before 25-11-2020 as otherwise, it will be presumed that you have no representation to make and further disciplinary action will be initiated against you in this regard as per due process of law.”*

*(Emphasis added)*

What preceded the second show cause notice (*supra*) is the proceedings of the Syndicate which was also communicated to the petitioner as the proceedings of the Syndicate of the same date places the petitioner under suspension. Certain portions of the order which are germane are extracted herein for the purpose of ready reference:

***“AND WHEREAS the report of ICC provides overwhelming evidence and the Syndicate is in complete agreement with the same. The entire episode shocks the***

*conscious of the Syndicate. Hence, the Syndicate considers this as a fit case in the interest of justice to propose the action of imposition of penalty on Prof Arabi U in accordance with law.*

**AND WHEREAS since the misconduct committed by Prof. Arabi U. is major and serious, the Syndicate proposes to impose major punishment of dismissal.** *However, the Syndicate deems it fit and proper to issue a show cause notice to Dr. Arabi U. as to why the punishment of dismissal shall not be imposed by serving 15 days clear notice with immediate effect considering the gravity of the situation.*

*AND WHEREAS since the victim has communicated to the University specifically expressing the consent to initiate appropriate legal action against the delinquent Prof. Arabi U. the Syndicate apprehends that there is every danger of victimizing the victim of sexual harassment, destruction of evidence, threat to the witnesses in view of the fact that the delinquent Professor namely Prof. Arabi U.*

*is still in service and very much available in the campus of the University holding an influential position of Research Guide, having regard to various relevant factors the Syndicate deems it fit and proper to place Prof. Arab U. under suspension for one month or until the completion of process of hearing of Dr. Arabi U. with regard to the proposed punishment is heard, whichever is earlier. This resolution has been passed by the Syndicate unanimously after holding detailed deliberations at length by each and every member.*

*AND WHEREAS in pursuance of the above resolution passed by the Syndicate, you are hereby called upon to submit your explanation/representation if any, within 15 days from the date of receipt of this show cause notice, as to why the **punishment of dismissal from service shall not be imposed on you as provided under the Statute governing Classification, Control and Appeal Rules of Employees of Mangalore University Rule 7(viii) and 9(1),***

***failing which it will be presumed that you have no representation to make and accordingly disciplinary action will be initiated against you in this regard in accordance with law.***

**Order No.MU/EST/Disci/CR128/2020-21/E8,**

**Dated 05-11-2020**

*In the light of the preamble and in pursuance thereof and in exercise of the power conferred under Rule 9(i) of the Statute governing Classification, Control and Appeal Rules (CCA) of Employees of Mangalore University, Dr. Arabi U., Professor, Department of Economics, Mangalore University is kept under suspension with immediate effect pending his reply to the show cause notice issued on 05.11.2020 until further orders.*

*During the period of suspension, he will be paid subsistence allowance as per rules. He should not leave the Headquarters during*

*the period of suspension without written permission of the undersigned.”*

***(Emphasis added)***

This order places the petitioner under suspension pending his reply to the show cause notice issued on 5-11-2020. The order which places the petitioner under suspension indicates that the Syndicate proposes to impose major punishment of dismissal from service invoking its power under the Service Rules. This is indicated in the second show cause notice as well. The second show cause notice also observes that in the event he would not submit his reply it would be presumed that he has no representation to make and further disciplinary action will be initiated against him. Both these orders, unequivocally direct that a decision is taken by the Syndicate to dismiss the petitioner from service. Dismissal being a penalty under the Service Rules, in my considered view, could not have been imposed without, at the outset, following the procedure

stipulated in the Rules empowering the University to dismiss the petitioner from service.

14. It is apposite to refer to Three Judge Bench judgment of the Apex Court in the case of **Dr. Vijayakumaran C.P.V** (*supra*) considering an identical issue and an order of termination passed based upon the report of the Committee wherein it is held as follows:

*“7. The appellant had assailed the impugned termination order dated 30-11-2017 being ex facie stigmatic. The learned Single Judge of the High Court of Kerala at Ernakulam (for short “the High Court”) vide judgment and order dated 30-1-2018 in Vijayakumaran C.P.V. v. Central University of Kerala [Vijayakumaran C.P.V. v. Central University of Kerala, 2018 SCC OnLine Ker 22418] , however, construed the same as one of termination simpliciter. The Division Bench of the High Court vide the impugned judgment and order dated 20-2-2018 in Vijayakumaran C.P.V. v. Central University of*

*Kerala [Vijayakumaran C.P.V. v. Central University of Kerala, 2018 SCC OnLine Ker 22417] has affirmed that view taken by the learned Single Judge and rejected the appeal preferred by the appellant.*

... ..

*11. In the present case, all the three elements are attracted, as a result of which it must follow that the stated order is ex facie stigmatic and punitive. Such an order could be issued only after subjecting the incumbent to a regular inquiry as per the service rules. As a matter of fact, the Internal Complaints Committee had recommended to proceed against the appellant appropriately but the Executive Council proceeded under the mistaken belief that in terms of Clause 7 of the contract, it was open to the Executive Council to terminate the services of the appellant without a formal regular inquiry as per the service rules. Indisputably, in the present case, the Internal Complaints Committee was constituted in reference to the complaints received from the girl students about the alleged misconduct committed by*

*the appellant, which allegations were duly inquired into in a formal inquiry after giving opportunity to the appellant and culminated with the report recording finding against the appellant with recommendation to proceed against him.*

***12. Upon receipt of complaints from aggrieved women (girl students of the University) about the sexual harassment at workplace (in this case, University campus), it was obligatory on the Administration to refer such complaints to the Internal Committee or the Local Committee, within the stipulated time period as predicated in Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short “the 2013 Act”). Upon receipt of such complaint, an inquiry is required to be undertaken by the Internal Committee or the Local Committee in conformity with the stipulations in Section 11 of the 2013 Act. The procedure for conducting such***

*inquiry has also been amplified in the 2015 Regulations. Thus understood, it necessarily follows that the inquiry is a formal inquiry required to be undertaken in terms of the 2015 Regulations. The allegations to be inquired into by such Committee being of “sexual harassment” defined in Section 2(n) read with Section 3 of the 2013 Act and being a serious matter bordering on criminality, it would certainly not be advisable to confer the benefit on such employee by merely passing a simple order of termination. Such complaints ought to be taken to its logical end by not only initiating departmental or regular inquiry as per the service rules, but also followed by the other actions as per law. In such cases, a regular inquiry or departmental action as per service rules is also indispensable so as to enable the employee concerned to vindicate his position and establish his innocence. We say no more.*

**13. A priori, we have no hesitation in concluding that the impugned termination order dated 30-11-2017 is illegal being ex facie stigmatic as it has been issued without subjecting the appellant to a regular inquiry as per the service rules. On this conclusion, the appellant would stand reinstated, but whether he should be granted back wages and other benefits including placing him under suspension and proceeding against him by way of departmental or regular inquiry as per the service rules, is, in our opinion, a matter to be taken forward by the authority concerned in accordance with law.** We do not intend to issue any direction in that regard keeping in mind the principle underlying the exposition of the Constitution Bench in *ECIL v. B. Karunakar* [*ECIL v. B. Karunakar*, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] . In that case, the Court was called upon to decide as to what should be the incidental order to be passed by the Court in case after following necessary procedure,

*the Court/Tribunal was to set aside the order of punishment. The Court observed thus: (SCC p. 758, para 31)*

*“31. ... Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be*

*reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”*

*(emphasis supplied)*

**14. Following the principle underlying the above quoted exposition, we proceed to hold that even though the impugned order of termination dated 30-11-2017 is set aside in terms of this judgment, as a result of which the appellant would stand reinstated, but at the same time, due to flawed approach of Respondent 1 University, the entitlement to grant back wages is a matter which**

*will be subject to the outcome of further action to be taken by the University as per the service rules and in accordance with law.*

*15. Accordingly, this appeal partly succeeds. We set aside the impugned judgments and orders dated 30.1.2018 and 20-2-2018 passed by the High Court including the order of termination dated 30-11-2017 issued under the signatures of the Vice-Chancellor of Respondent 1 University; and instead direct reinstatement of the appellant and leave the question regarding back wages, placing him under suspension and initiating departmental or regular inquiry as per the service rules, to be taken forward by the authority concerned in accordance with law.”*

*(Emphasis supplied)*

The Apex Court clearly holds that the order of termination being passed on the basis of Internal Complaints Committee was illegal and sets aside the

order of termination and directs reinstatement. The judgment of the Apex Court considers the effect of the Act, the report of the Committee and the order of termination.

15. The submission of the learned senior counsel appearing for the University that the report of the Inquiry Officer is itself material enough to conclude and impose the penalty under the Service Rules would in the first blush seem acceptable in the light of the judgment of Apex Court in the case of **Medha Kotwal Lele** wherein the Apex Court holds that the report of the Committee would be deemed to be an inquiry report in a disciplinary action under such Service Rules and Conduct Rules. Though this judgment directed that this itself would be an inquiry report, the judgment also considers directions in the judgment of **Vishaka** which was necessary to remain effective until legislative enactment on the subject is in place. **Metha Kotwal**

**Lele** also depicts that these directions would be valid till appropriate legislation is brought out. Once legislation steps in, the rigor of the guidelines or tenor of the guidelines, in my considered view, would become inapplicable.

16. The statute depicts a particular action to be performed in a particular manner. The procedure stipulated therein cannot be given a go-bye by following the judgment of the Apex Court in the case of **Medha Kotwal Lele**. The three Judge Bench decision of the Apex Court in the case of **Medha Kotwal Lele** was to be in operation till the legislation, as was directed in the case of **Vishaka**. Subsequent to the legislation, the later three Judge Bench in the case of **Dr. Vijayakumaran C.P.V.** would cover the issue and the law declared by the Apex Court in the said case would be applicable to the facts of the case at hand, as the Apex Court considers the Regulations of the Central

University of Kerala, Regulations of University Grants Commission and the Act and holds that such report of the Committee ought to be taken to its logical end not only by initiating departmental or regular inquiry as per the Service Rules, but also followed by other actions in law.

17. The Apex Court holds that in such cases a regular inquiry or a departmental action as per the Service Rules is indispensable. The Apex Court was considering a probationer in the case of **Dr. Vijayakumaran C.P.V.** The case at hand is of a regular employee who has put in 37 years of service in the University and is on the verge of retirement. Therefore, the petitioner, in the case at hand, is on a higher pedestal *qua* the procedures to be followed under the Rules in comparison to that of the employee in **Dr. Vijayakumaran CPV's** case. Therefore, the contention

of the learned senior counsel appearing for the respondent/University is unacceptable.

18. Insofar as the submission that the petitioner ought to have held his hands till the order was passed pursuant to the reply given to the show cause notice is also unacceptable for the reason that the penalty of dismissal was also resolved to be imposed by the University. Apart from it, being a post-decisional hearing, the decision to impose penalty of dismissal was clearly an act without jurisdiction, as no inquiry as contemplated under the Service Rules was ever initiated against the petitioner. Therefore, the petitioner did have a right to approach this Court, at this juncture, to stall the *fait* from becoming an *accompli*. None of the submissions advanced by the learned senior counsel appearing for the University sounds acceptance, as the Apex Court has clearly delineated the action to be taken on a complaint under Section 9 of the Act in the case of

**Dr. Vijayakumaran.** It is made clear that the consequence of obliterating the second show cause notice will not however mean that the order of suspension passed on the same day as that of the second show cause notice stands obliterated, as there is no challenge to the order of suspension.

19. Before I say omega to the case at hand, I deem it appropriate to quote the oft-quoted words of Justice Felix Frankfurter rendered, being a part of the judgment, in **VITRELI v. SEATON**<sup>11</sup> reading:-

***“ . . .if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.”***

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<sup>11</sup> 359 US 535 (1959)

***The history of liberty” said the same learned Judge “has largely been the history of observance of procedural safeguards” in McNobb v. US<sup>12</sup>,***

The said observations in the judgments (*supra*), in the circumstances are apposite.

20. For the *praefatus* reasons, I pass the following:

### **ORDER**

- (a) Writ Petition is allowed.
- (b) The impugned show cause notice dated 05.11.2020 Annexure AA stands quashed.
- (c) It is declared that no penalty can be imposed against the petitioner on the basis of the report of the committee in terms of the Service Rules of the University without holding any inquiry as obtaining under the Service Rules.

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<sup>12</sup> 318 US 332

- (d) The University is at liberty to initiate proceedings against the petitioner under the Service Rules by following the procedures stipulated therein and conclude the proceedings within **two months** from the date of receipt of the copy of the order.
- (e) The University to bear in mind the restrictions on examination or cross-examination and the anonymity that the Act provides to the complainant which is to be strictly adhered to while conducting an inquiry under the service rules of the University against the petitioner.
- (f) The petitioner would be entitled to all consequential benefits that would flow from the aforesaid directions.

**Sd/-  
JUDGE**

- <sup>3</sup>***Sexual Harassment of Women at Workplace  
(Prevention, Prohibition and Redressal) Act, 2013***
- <sup>4</sup>***(2020) 12 SCC 426***
- <sup>5</sup>***2018 SCC OnLine Delhi 9340***
- <sup>6</sup>***(1997) 6 SCC 241***
- <sup>7</sup>***(2013) 1 SCC 297***
- <sup>8</sup>***(2013) 11 SCC 641***
- <sup>9</sup>***Sexual Harassment of Women at Workplace  
(Prevention, Prohibition and Redressal) Rules,  
2013***
- <sup>10</sup>***Classification, Control and Appeal Rules of  
Employees of Mangalore University***
- <sup>11</sup>***359 US 535 (1959)***
- <sup>12</sup>***318 US 332***

bkp  
CT:MJ