

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWAND)

REVIEW PETITION No. 928 of 2023

BETWEEN:-

DR. RAJESH MALIK S/O LATE JUSTICE M.L MALIK, AGED ABOUT 60 YEARS, OCCUPATION: PROFESSOR AND HEAD OF RADIODIAGNOSIS AND DEAN (ACADEMICS), ALL INDIA ISTITUTE OF MEDICAL SCIENCES, BHOPAL 462020, R/O E-1/2, ARERA COLONY, BHOPAL DISTRICT BHOPAL 462016 (M/P.)

....PETITIONER

(BY SHRI N.S. RUPRAH – ADVOCATE WITH SHRI NAVTEJ SINGH RUPRAH AND MS POONAM SONKAR - ADVOCATES)

AND

- 1. ALL INDIA INSTITUTE OF MEDICAL SCIENCES THROUGH ITS DIRECTOR BHOPAL, SAKET NAGAR, BHOPAL - 462020 (M.P.)**
- 2. PRESIDENT ALL INDIA INSTITUTE OF MEDICAL SCIENCES, BHOPAL SAKET NAGAR, BHOPAL 462020 (M.P.)**
- 3. DIRECTOR ALL INDIA INSTITUTE OF MEDICAL SCIENCES, BHOPAL, SAKET NAGAR, BHOPAL 462020 (M.P.)**
- 4. UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE, NIRMAN BHAWAN NEW DELHI - 110011**
- 5. CHAIRPERSON, INTERNAL COMPLAINTS COMMITTEE, ALL INDIA INSTITUE OF MEDICAL SCIENCE, BHOPAL, SAKET NAGAR, BHOPAL 462020 (M.P.)**

6. **PROF. (DR.) BHAVNA SHARMA, PROF. AND HEAD OF DEPARTMENT OF OPHTHALMOLOGY, ALL INDIA INSTITUTE OF MEDICAL SCIENCES, BHOPAL SAKET NAGAR, BHOPAL 462020 (M.P.)**
7. **PROF. (DR.) ARNEET ARORA, PROF. AND HEAD OF DEPARTMENT OF FORENSIC MEDICINE AND TOXICOLOGY, ALL INDIA INSTITUTE OF MEDICAL SCIENCES, BHOPAL, SAKET NAGAR, BHOPAL 462020 (M.P.)**

.....RESPONDENTS

(RESPONDENT NO.1 BY MS KANAK GAHARWAR - ADVOCATE)

Reserved on : 08.05.2024

Pronounced on : 15.05.2024

This petition having been heard and reserved for orders, coming on for pronouncement this day, Hon'ble Shri Justice Sheel Nagu pronounced the following:

ORDER

This petition seeks review of final order dated 03.08.2023 passed in M.P. No.2664 of 2023 by this Court whereby M.P. No.2664 of 2023 preferred by petitioner assailing interlocutory order dated 04.05.2023 in O.A. No.418 of 2023 declining interim relief to petitioner passed by the Central Administrative Tribunal, Jabalpur, was dismissed.

2. The reason assigned for dismissal as contained in the impugned order under review was that the Tribunal rightly declined interim relief to petitioner in O.A. No.418 of 2023 on the ground of petitioner failing to avail alternative remedy of appeal against

‘Censure’.

3. Learned counsel for rival parties are heard.

4. The sole ground raised by learned counsel appearing for review petitioner is that the decision of Apex Court in **Dr. Vijayakumaran C.P.V. Vs. Central University of Kerla and another, (2020) 12 SCC 426** was not considered by this Court.

4.1 The case of **Dr. Vijayakumaran C.P.V.**(supra) related to the question as to whether the termination order therein was simpliciter or *ex facie* stigmatic, which is evident from perusal of following extracted paragraphs :

Para 1

“Leave granted. The moot question involved in this appeal is whether the order issued under the signatures of Vice-Chancellor of the Central University of Kerala (Respondent 1), dated 30-11-2017 is simpliciter termination or ex facie stigmatic? The said order reads thus:.....”

Para 7

“7. Accordingly, the moot question before us is whether the order dated 30-11-2017 can be regarded as order of termination simpliciter or is ex facie stigmatic?”

4.2 The facts in the case of **Dr. Vijayakumaran C.P.V.** (supra) no doubt pertained to complaint of sexual harassment which was inquired into by the Internal Complaints Committee. A reading of paragraph 12 of said judgment reveals that no detailed enquiry was held under the 2015 Regulation framed under the Act of 2013 and neither any disciplinary proceedings under the Service Regulation

were conducted before terminating the employee before the Apex Court.

4.3 It is not clear from the case of **Dr. Vijayakumaran C.P.V.** (supra) as to whether service conditions of employee therein were governed by Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short ‘CCS (CCA) Rules’) or not.

4.4 It appears that the employee before the Apex Court in **Dr. Vijayakumaran C.P.V.** (supra) was not governed by CCS (CCA) Rules for disciplinary matters and, therefore, there was no reference of the Rules of 1965 in the judgment.

4.5 In the present case, the disciplinary matters of petitioner are squarely governed by CCS (CCA) Rules which in Rule 14 provides for procedure for imposing major penalty. Rule 14 was amended on 10.07.2004 to incorporate proviso after Rule 14(2), which reads thus:

“14. Procedure for imposing major penalties –

(1) xxx xxx xxx

(2) xxxx xxxx xxxx

“Provided that where there is a complaint of sexual harassment within the meaning of Rule 3-C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules.”]”

4.6 A bare reading of the aforesaid inserted proviso after Rule 14(2) makes it clear that the enquiry conducted by the ICC under the Act of 2013 is treated as an enquiry held under Rule 14 by the Inquiring Officer without there being any requirement of holding a separate departmental enquiry under Rule 14 after the ICC has conducted enquiry and rendered its findings.

4.7 In view of above discussion, it is obvious that neither is the case of **Dr. Vijayakumaran C.P.V.**(supra) pertaining to CCS (CCA) Rules nor the fact of the proviso to Rule 14(2) was brought to the attention of the Apex Court and, therefore, the ratio laid down by the Apex Court was based on a distinct factual matrix than the one attending herein.

5. Consequently, the contention of the Review Petitioner of non-consideration of the decision in **Dr. Vijayakumaran C.P.V.** (supra) does not impress this Court and, therefore, no palpable error is found in the order under Review, which accordingly is upheld.

6. Accordingly review petition stands **dismissed** with no cost.

(SHEEL NAGU)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

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