R.Ravichandran vs The Additional Commissioner Of Police on 5 October, 2010

Author: S. Manikumar

Bench: S. Manikumar

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2010

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

W.P.No.12590 of 2009
M.P.No.2 of 2009

R.Ravichandran ... Petitioner

Versus

1. The Additional Commissioner of Police,
Traffic, Chennai.

2. The Commissioner of Police,
Chennai Sub Urban,
St. Thomas Mount, Chennai-16. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance

For Petitioner : Mr.K.Venkataramani, SC
for Mr.M.Muthappan

For Respondents : Mr.R.Murali, GA

O R D E R

It is the case of the petitioner that he entered the Police Department, as a Police Constable in City Armed Reserve Unit and gradually, promoted to the post of Head Constable. While he was serving as Head Constable, attached to the Traffic Investigation Team, GST Tambaram, he has been falsely

implicated in a criminal case registered in Crime No.2/AC/2008/CC (V), dated 4.2.2008, on the complaint preferred by one Mr.Janakiraman, S/o of Nithayanandam, Chennai-86, alleging that he had demanded illegal gratification of Rs.3000/- for the release of an Ambassador Car bearing Registration No.TN 07 AP 8358, involved in an accident case, registered in Crime No.39/08, under Sections 279 and 338 of the Indian Penal Code. According to him, he had not met the complainant, Mr.Janakiraman nor he has powers to release the vehicle involved in any criminal case. It is only the Sub Inspector of Police of Traffic Investigation Wing, who is competent to release the vehicle involved in the accident. He has denied the allegation of demand of illegal gratification.

2. It is the further contention of the petitioner that even as per the First Information Report, there is a specific averment that it is only the Sub Inspector of Police, Mr.Goguldass, who had demanded illegal gratification from the complainant. He further submitted that on 4.2.08, he was on station duty from 1 P.M., to 8 P.M., and around 5.30 P.M., the complainant approached him, stating that the Sub Inspector of Police, Mr.Goguldass asked him to meet. But the petitioner told him that the Sub Inspector of Police, Traffic Investigation, was available in the adjacent room. Thereafter, the complainant left the place and after 5 minutes, returned to the Station, stating that the Sub Inspector of Police requested him to handover a sum of Rs.3000/- to be paid to him. He refused to receive the amount stating that he did not demand any illegal gratification either for releasing the accused or releasing the vehicle, involved in the criminal case.

3. It is the further case of the petitioner that though the complainant forced him to receive the amount, but he refused. Thereafter, he thrusted the amount into his right side pant pocket. He took out the money from his pant pocket and handed over to him. But the complainant refused to receive the same and left the place abruptly. As he had not demanded any amount, he had thrown the money through the window. After 10 minutes, the Vigilance officials arrived there along with the complainant and asked the petitioner, whether he had received the illegal gratification. The petitioner replied that he did not demand and accept any illegal gratification, but told them that the complainant, Thiru.Janakiraman forcibly thrusted the same into his pant pocket, which was thrown away.

4. The petitioner has further submitted that his explanation was not accepted. He was subjected to phenolphthalein test. The Sub Inspector of Police seemed to have told the vigilance officials that he did not ask the petitioner to receive the bribe amount. That is how, the petitioner was made a scapegoat by the Sub Inspector of Police. The petitioner and the Sub-Inspector of Police were arrested by the vigilance officials and on the same date, they were released on bail. Following the arrest, on 5.2.2008, the first respondent has passed the impugned order of suspension, stating that a criminal case has been registered against him under the provisions of Prevention of Corruption Act and that the same was under investigation. Subsequently, a charge sheet was filed on the file of the learned Chief Judicial Magistrate/Sub Judge, Chengalpet, in CC No.10/08.

5. The petitioner has further submitted that the respondent has not reviewed the order of suspension, after the filing of the charge sheet before the Court of competent jurisdiction, as provided under G.O.Ms.No.40, P & AR Department, dated 30.1.1996. Since, he is under prolonged suspension without any review, he made representations, dated 24.8.2008 and 23.01.2009, to

revoke the order of suspension. Without considering the representations in proper perspective, the first respondent has rejected the same on the ground that the petitioner has been charge sheeted in the criminal case and it is pending trial. Being aggrieved by the same, the petitioner has filed the present writ petition to quash the suspension order, dated 05.02.2008 and the order, dated 24.02.2009, rejecting his request for revocation.

6. Assailing the correctness of the order of suspension and rejection for revocation, Mr.K.Venkataramani, Learned Senior Counsel for the petitioner submitted that the impugned order of suspension was passed on 05.02.2008 and even after a lapse of one year, it was not reviewed by the Department, though sanction for prosecution has already been granted and consequently, on completion of the investigation, a charge sheet has been filed in C.C.No.10 of 2008 on the file of the Learned Chief Judicial Magistrate. It is the further contention of the learned Senior Counsel that when G.O.Ms.No.40, dated 30.01.1996, contemplates review of suspension, the appointing authority has failed to consider the same in proper perspective.

7. Learned Senior Counsel for the petitioner further submitted that when the charge sheet has already been filed, the question of tampering with the witnesses will not arise and therefore, the respondents ought to have restored the petitioner in service and if necessary, place him in an insignificant post. He further submitted that pursuant to the filing of the charge sheet before the Learned Chief Judicial Magistrate, examination of witnesses has already commenced and therefore, there is no need to continue the petitioner under suspension.

8. Referring to the interim order granted by this Court on 24.07.2009, on the ground that there was no progress in the trial and also of the fact of its compliance in reinstating the petitioner, without prejudice to the trial and in the absence of any allegation of tampering of witnesses, for nearly one year, since the date of reinstatement, Learned Senior Counsel for the petitioner submitted that the petitioner may be permitted to continue discharge his duties, till the disposal of the trial. He therefore submitted that if the petitioner had to undergo suspension again, pending trial, which is likely to take more time, then irreparable hardship would be caused. For the above said reasons, he prayed that the petitioner be allowed to discharge his duties as police constable, till the completion of the trial and no serious prejudice would be caused to the Department.

9. On the basis of the counter affidavit filed by the Commissioner of Police, Sub-Urban Police, St.Thomas Mount, Chennai, the second respondent herein, Mr.R.Murali, learned Government Advocate submitted that when the petitioner was working as Head Constable in Traffic Wing on GST Road, Tambaram from 18.03.2006 to 05.02.2006, on a written complaint from Thiru.Janakiraman, Chennai-56, with the Director of Vigilance and Anti-Corruption, to the effect that the Head Constable 9949, Mr.Ravichandran (the writ petitioner herein) and the Sub Inspector of Police, Mr.Gokuldoss, demanded Rs.3,000/- as bribe, for releasing a Tourist Ambassdor Car, bearing Registration No.TN 07 AB 8358, involved in a road accident, caused on 31.01.2008, the Vigilance and Anti-Corruption Police, laid a successful trap on 04.02.2008 and caught the petitioner and the above said Sub-Inspector of Police, red-handed at 17.00 Hours in DVAC Cr.No.02/AC/2008/CC-VI, under Section 7 of the Prevention of Corruption Act, 1988. As the petitioner was involved in a criminal case and arrested by the Vigilance and Anti-Corruption police,

he was placed under suspension on 05.02.2008. Subsequently, he made a representation to the second respondent to reinstate him in service. But his case was not considered, as per the instructions of the Director of Vigilance and Anti-Corruption, Chennai and Government Order in G.O.Ms.No.40, P & AR Department, dated 30.01.1996.

10. On the merits of the case, Mr.R.Murali, learned Government Advocate further submitted that a Complaint was given by the said Mr.Janakiraman to the Director of Vigilance and Anti-Corruption Department, alleging that the petitioner and the abovesaid Sub Inspector of Police demanded a sum of Rs.3,000/- for releasing a Tourist Ambassdor Car, involved in a road accident, in Cr.No.39 of 2008, under Sections 279 and 338 IPC. As per the version of the Commissioner of Police, Chennai Sub Urban Police, Chennai, second respondent, the petitioner had asked the complainant to bring money on 01.02.2008 between 1 P.M. and 2 P.M. On 01.02.2008 at about 8.00 P.M., when Mr.Janakiraman, owner of the car and Mr.Sathish, driver of the said car, went to the Police Station, the petitioner introduced them to the Sub-Inspector of Police, Mr.Gokuldass.

11. It is the further contention of the learned Government Advocate that when the complainant handedover a sum of Rs.3,000/-, the petitioner received it, by his right hand, counted the bribe amount with both hands and thereafter, placed it in his right side pant pocket. In the above said circumstances, learned Government Advocate submitted that the averments in the supporting affidavit do not reflect the correct factual position.

12. Placing reliance on a decision of the Division Bench of this Court in D.Uthirakumaran v. The Government of Tami Nadu reported in 1988 Writ.L.R. 229, Mr.R.Murali, learned Government Advocate further submitted that rule 17(e)(i) of the above said Rules, empowers the appointing/disciplinary authority to suspend a member of a service, pending contemplation of an enquiry into grave charges against him, or pending enquiry or when the investigation or trial is pending. He further submitted that when the power to place the petitioner under suspension has been exercised bona fide on consideration of facts, forbidding the petitioner to work and when salary under the rules is paid during the period of suspension, the exercise of power and placing the petitioner in public interest, cannot be questioned, except on the limited ground of lack of jurisdiction.

13. Learned State Counsel further submitted that when the petitioner was caught red handed for demand and acceptance of bribe amount and placed under suspension, in public interest, there is no manifest illegality. According to him, exercise of such power to place the petitioner under suspension in public interest was an immediate necessity.

14. Taking this Court through the facts of the case in A.Abdul Gani v. The Superintending Engineer reported in 1996 (1) MLJ 52, learned Government Advocate further submitted that in the above reported case, there was a trap by the Vigilance and Anti Corruption Department. During which currency of Rs.100/- was seized from the petitioner and another person. The petitioner therein was suspended for acceptance of bribe of Rs.100/- for providing electricity service connection. When the order of suspension was questioned on the ground that it caused hardship, prejudice, humiliation, agony and the subsistence allowance, paid being lesser than salary, this Court rejected the

contentions on the ground that suspension resorted to by the Department was not a punitive action, but to keep the officer out of sphere of action, pending trial. He further submitted that as long as there is bona fide exercise of power and in the absence of any vindictiveness or arbitrariness, no interference is called for.

15. Placing reliance on a Division Bench judgment in The Chairman and Managing Director, Tamil Nadu Salt Corporation Limited, v. N.Subramanian reported in 2007 (1) MLJ 550, learned Government Advocate further submitted that in service jurisprudence, the concept of suspension is well recognised and the employer has the absolute right to place its employee under suspension and courts normally do not sit in judgment over the discretion exercised by the employer.

16. Placing reliance on an unreported judgment in W.P.No.14406 of 2009, dated 19.06.2003 [State of Tamil Nadu v. Noor Mohammed], Mr.R.Murali, learned State Counsel further submitted that when the Tamil Nadu Administrative Tribunal, Madras, considered a case of a General Manager, who was allegedly involved in a trap case, caught red handed and lateron, suspended, following his arrest. The Tribunal dismissed his Original Application, taking a view that limitation for review of suspension, as per Clause VI of G.O.Ms.No.40, dated 30.01.1996, is not applicable in such cases. However, subsequently, when the same Tribunal, allowed another Original Application filed by him, on the ground that, the suspension was continued for more than two years and consequently, directed revocation, this Court, while testing the correctness of the order, opined that the Tribunal ought not to have found fancy about the period of two years, as unreasonableness and revoked the order of suspension, without bothering to mention any facts in the order. Learned Government Advocate further submitted that the said judgment, though unreported, would clearly apply to the facts of this case.

17. Placing reliance on a decision of the Supreme Court in State of Orissa v. Bimal Kumar Mohanty reported in 1994 (4) SCC 126, learned Government Advocate further submitted that when suspension is made, pending investigation or criminal trial and in particular, when serious misconduct of corruption or grave irregularities are alleged, Courts should exercise a restraint in granting interim orders of stay of suspension and exercise of such discretionary power by the competent authority, after taking into consideration, the pros and cons to maintain purity in administration should not be interfered with. He also submitted that when the authority has exercised his discretion, keeping in mind, the public interest and the impact of such government servant's continuance in office, who is facing a departmental inquiry into grave charges or trial of a criminal charge, involving moral turpitude, no interference is called for.

18. Placing reliance on a decision of the Apex Court in Allahad Bank v. Deepak Kumar Bhola reported in 1997 (4) SCC 1, learned Government Advocate submitted that when the appointing/disciplinary authority has considered the gravity of the offence, involving moral turpitude, in the present case, an offence punishable under the Prevention of Corruption Act, and even if, there is any likelihood of delay in concluding the criminal trial before the learned Chief Judicial Magistrate/Sub Judge, Chengalpet, yet, it would be wholly undesirable to allow the petitioner to discharge his duties, when he is facing a serious charge of corruption. According to him, the mere fact that the petitioner was under suspension for more than one year, would not

clothe him any right to seek for restoration of his services, even in an insignificant post. He also submitted that when this Court granted an interim order on 24.07.2009, the same was implicitly obeyed by the Department and that does not mean that the writ petitioner can be allowed to continue to discharge his duties, pending trial, as it would affect the morale of other government servants. In this context, learned Government Advocate drew the attention of this Court to Deepak Kumar Bhola's case (cited supra) where the respondent therein was under suspension for a period of more than 10 years, even after filing of the charge sheet before the Criminal Court.

19. Taking this Court through the facts of the case in Balvantray Ratilal Patel v. State of Maharastra reported in AIR 1968 SC 800, learned Government Advocate further submitted that in the above reported case, the appellant therein was a member of the Bombay Medical Service and on a complaint, the Anti-Corruption Branch, laid a trap and recovered marked currency notes from him. Thereafter, when the report of the Police was forwarded to the Surgeon General with a request that the appellant therein should be placed under suspension with immediate affect, pending disposal of the case, the appellant made a representation to the Surgeon General, alleging that he was falsely implicated by the Anti-Corruption Branch Police and requested to consider his representation before sanction for prosecution is given and making an order of suspension. The Surgeon General forwarded the report of the Sub-Inspector of Police as well as the representation of the appellant to the Government. After getting approval from the Ministry of Health and the Hon'ble Chief Minister for the State and also from the Deputy Secretary to the Government, the Surgeon General placed the appellant therein under suspension. The learned Government Advocate, drew the attention of this Court to the general principles, adumbrated in the said judgment, governing the rights of the employer to suspend an employee, pending enquiry or trial, vis-a-vis that the employee and further submitted that except payment of salary, during the period of suspension, which depends upon the provisions of the statute or rules, the petitioner is not entitled to seek for retention in service.

20. Though the interim order of stay granted by this Court in M.P.No.1 of 2009, dated 24.07.2009, has been implicitly obeyed, placing reliance on a decision of the Supreme Court in Shyam Lal Yadev v. Kusum Dhawan reported in 1979 (4) SCC 143, learned Government Advocate submitted that the interim order granted in the Miscellaneous Application requires to be vacated. For the above said reasons, he submitted that there is no manifest illegality in suspending the petitioner, pending trial and in the order, rejecting the request for revocation.

21. Referring to Clause VI in G.O.Ms.No.40, dated 30.01.1996, learned Government Advocate further submitted that the time limit provided for review of suspension applicable to ordinary cases, is not applicable to suspension, pending investigation or trial and therefore, the contentions to the contra, has to be rejected. For the above said reasons, he prayed to vacate the interim stay and dismiss the writ petition.

Heard the learned counsel appearing for the parties and perused the materials available on record.

22. Some of the issues which arise for consideration in this writ petition are,

(i) Whether the authority, who has placed a government servant under suspension is statutorily bound to review the suspension, when he is facing investigation into a criminal case/trial of an offence, involving moral turpitude, like corruption, embezzlement, misappropriation or for such other serious offences before the Criminal Court and if review of suspension is not done by the authority, who has placed the government servant under suspension or by the higher authority, whether the said order would become automatically invalid?

(ii) Whether the time limit prescribed for review of suspension in G.O.Ms.No.40, dated 30.01.1996 is applicable to criminal cases?

(iii) What is the right of a government servant during the period of suspension pending enquiry into the charges, under contemplation/pending investigation/trial?

(iv) When the appointing/disciplinary, authority/government can exercise his discretion to place a government servant under suspension and what are all the factors to be taken into consideration?

(v) Whether the order of suspension is administrative or quasi-judicial nature?

(vi) When the power of judicial review exercised by Courts in adjudicating the legality or correctness of an order of suspension passed by the appointing/disciplinary, authority/government, pending contemplation of the charges/enquiry/investigation/trial, what is the extent of discretion to be exercised by Courts?

(vii) Whether the Courts can merely strike down orders of suspension issued against the government servant and continued, pending disposal of the investigation/trial of offences involving moral turpitude, particularly, corruption, on the sole ground that there is no progress in the investigation or trial for a considerable period, there is no likelihood of tampering with the witnesses or prolonged suspension, pending investigation or trial, causes agony and humiliation?

(viii) Whether a government servant placed under suspension for involvement in serious offences/misconduct, involving moral turpitude can seek for retention in service in any insignificant post or seek for transfer, on the sole ground that the suspension is prolonged pending investigation/trial?

23. Suspension, as per Wharton s Law Lexicon, 14th Edn., is a temporary stop or hanging up as it were of a right for a time, also a censure on ecclesiastical persons, during which they are forbidden to exercise their office or take the profits of their benefices.

24. 'Suspension' means, "action of debarring or state of being debarred, especially, for a time, from a function or privilege; temporary deprivation of one's office or position, or again, state of being temporarily kept from doing or deprived of something.

25. Suspension as per Black's Law Dictionary: 7th Edn. Pg.1460 means, (1) to interrupt; postpone; defer (2) to temporarily keep a person from performing a function, occupying an office, holding a

job or exercising a right or privilege.

26. As per Stroud's Judicial Dictionary, Suspension or Suspense is a temporal, ie., temporary, Stop of Mans' Right (Cowel). Suspension, as per Bauvier s Law Dictionary, Vol.II, means a temporary stop of right, of a law, and the like. As per the Ramanatha Iyer's Dictionary, suspension means temporary intervention or cession of something (as) office, work or labour.

27. The act of debarring for a time from a function or privilege . It means a temporary deprivation of once office or position. The suspended officer does not cease to be a public servant, he is only prevented from discharging the duties of his office for the time being. [K.J. Aiyar s Judicial Dictionary, 14th Edn.]

28. Suspension, according to Oxford Dictionary, means, The action of suspending or condition of being suspended, the action debarring especially for a time from, a function or privilege, temporary deprivation of one s office or position or again, state of being temporarily kept from doing or deprived of something.

29. Suspension is, to defer; to debar from any privilege, office employment, et., for a time being. [Ref. Hemanth Kumar v. S.N.Mukherjee reported in AIR 1954 Cal. 340]

30. Suspension cannotes temporary cessation of something as right, work or labour. The basic idea underlying the root word, suspend and all its derivatives is that a person while holding an office and performing its functions of holding a position or privilege should be interrupted in doing so and debarred for the time being from further functioning in the office or holding the position and privilege. He is intercepted in the exercise of his functions of his employment of the privilege and put aside, as it were, for a time, excluded during the period from his functions or privileges. Such is the concept of a suspension order. Reference can be made to the decision in Abid Mohd. Khan v. State of M.P. reported in AIR 1958 MP 44.

31. In the case on hand, the petitioner is involved in an act of corruption, for which, a case has been registered and after investigation, charge sheet has been laid in CC No.10/08 on the file of the Chief Judicial Magistrate/Special Judge, Chengalpattu. At this juncture, it is worthwhile to extract the views of the Supreme Court in cases relating to corruption, in K.C.Sareen v. CBI, reported in 2001 (6) SCC 584, "Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functions of the public and impeded from gripping the normal and orderly functions of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic policy. Profit ration of corrupt public servants could garner momentums to cripple the social order of such men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after a judicial when a adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior Court. The mere fact that an appellate Court or revisional forum has decided to entertain his

challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction." (emphasis supplied)

32. Power of the State Government to place a Government servant under suspension is given under Rule 17(e) of the Tamil Nadu Government Servant (Discipline and Appeal) Rules, which reads as follows:

> (e) (1) A member of a service may be placed under suspension from service, where-
>
> (i) an enquiry into grave charges against him is contemplated, or is pending; or
>
> (ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest.
>
> (2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended under this rule.
>
> (3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.
>
> (4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be

deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders. Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court of law has passed an order purely on technical grounds without going into the merits of the case.

(5) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise) and any other disciplinary proceedings are commenced or any other criminal complaint is under investigation or trial against him during the continuance of that suspension, and where the suspension of the Government servant is necessary in public interest as required under clause (1), the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings including departmental proceedings taken on the basis of facts which led to the conviction in a Criminal Court.

(6) An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

33. While explaining the scope of the then Section 5(1)(d) of the Prevention of Corruption Act, 1947, the Supreme Court in M.Narayanan Nambiar v. State of Kerala reported in AIR 1963 SC 1116, has held that, The preamble indicates that the Act was passed as it was expendient to make more effective provisions for the prevention of bribery and corruption. The long title as well as the preamble indicate that the Act was passed to put down the said social evil i.e. bribery and corruption by public servant. Bribery is a form of corruption. The fact that in addition to the word bribery the word corruption is used shows that the legislation was intended to combat also other evil in addition to bribery. The existing law i.e. Penal Code was found insufficient to eradicate or even to control the growing evil of bribery and corruption corroding the public service of our country. The provisions broadly include the existing offences under Sections 161 and 165 of the Indian Penal Code committed by public servants and enact a new rule of presumptive evidence against the accused. The Act also creates a new offence of criminal misconduct by public servants though to some extent it overlaps on the pre-existing offences and enacts a rebuttable presumption contrary to the well known principles of Criminal Jurisprudence. It also aims to protect honest public servants from harassment by prescribing that the investigation against them could be made only by police officials of particular status and by making the sanction of the Government or other appropriate officer a pre-condition for their prosecution. As it is a socially useful measure conceived in public interest, it should be liberally construed so as to bring about the desired object i.e. to prevent corruption among public servents and to prevent harrassment of the honest among them. (emphasis supplied)

34. In Pratap Singh v. State of Punjab reported in AIR 1964 SC 72, the Supreme Court explained the effect of suspension as follows:

> Suspension of a Government servant, during the course of his service, simply means that no work is to be taken from him during the period of suspension. The Government servant does not work on a post during the period of his suspension. If he is actually discharging the duty of a certain office prior to suspension, the order of suspension would mean that he would cease to work on and discharge the duties of that post. If at that time he is not working on any post but is on leave, no question of his actually ceasing to work or giving up the discharge of duty arises, but that does not mean that the order of suspension would be ineffective.

35. Explaining the nature of the order of suspension, as to whether it is administrative or quasi-judicial and whether the government servant should be given an opportunity before suspending him from service, the Supreme Court in Pratap Singh's case (cited supra), the Supreme Court held that it cannot be said suspension of a Government servant without calling him to explain the charges first, was bad as the proceedings to suspend him were not of a quasi-judicial character and, therefore, necessitated the Government s obtaining his explanation to the charges of misconduct before passing the order of suspension. The order suspending the Government servant pending enquiry is partly an administrative order. What has been held to be quasi-judicial is the enquiry instituted against the Government servant on the charges of misconduct, an enquiry during which under the rules it is necessary to have an explanation of the Government servant to the charges and to have oral evidence, if any, recorded in his presence and then to come to a finding. None of these steps is necessary before suspending a Government servant pending enquiry. Such orders of suspension can be passed if the authority concerned, on getting a complaint of misconduct, considers that the alleged charge does not appear to be groundless, that it requires enquiry and that it is necessary to suspend the Government servant pending enqiry.

36. In R.P.Kapoor v. Union of India reported in AIR 1964 SC 787, the Supreme Court considered the rights of a Government servant during the period of suspension and the power of the government to place him under suspension. At Paragraph 11, the Apex Court held as follows:

> The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or

> pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act, 10 of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. Or the government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Article 314 and this brings us to an investigation of what was the right of a member of the former Secretary of State s Services in the matter of suspension, whether as a penalty or otherwise.

37. The power of the appointing authority/disciplinary authority/government to place the government servant under suspension, even before the formulation of specific charges is upheld in Balwantray Rati Lal Patel v. State of Maharastra reported in AIR 1968 SC 800, where the Supreme Court held that the Government may rightly take the view that an officer against whom serious imputation are made should not be allowed to function anywhere before the matter has been finally set at rest after proper scrutiny and holding of departmental proceedings. Ordinarily, when serious imputation are made against the conduct of an officer, the disciplinary authority cannot immediately draw up the charges, it may be that the imputations against an officer and a definite conclusion by a superior authority that the circumstances are such that definite charges can be leveled against the officer. Whether it is necessary or desirable to place the officer under suspension even before definite charges have been framed would depend upon the circumstances of the case and the view which is taken by the Government concerned. There would be nothing improper per se if the rules were to provide for suspension even before definite charges of misconduct had been communicated to the officer concerned. In principle there is no difference between the position of an officer against whom definite charges have been framed to which he is required to put in his written statement and a situation where on receipt of allegations of grave misconduct against him after the Government is of the opinion that it would not be proper to allow the officer concerned to function in the ordinary way. The order is this case shows that serious allegations of corruption. In substance, disciplinary proceedings can be said to be stated against an officer when complaints about his integrity or honesty are entertained and followed by a preliminary enquiry into them culminating in the satisfaction of the Government that a prima facie has been made out against him

for framing of charges. When the order of suspension itself shows that the Government was of the view that such a prima facie case for departmental proceedings had been made out, the fact that the order also mentions that such proceedings were contemplated makes no difference. (emphasis supplied)

38. In A.K.K.Nambiar v. Union of India reported in 1969 (3) SCC 864, the Sub-Inspector of Police, Hyderabad, was placed under suspension on the basis of the report of CBI. The said order was challenged on two grounds, viz., the report of the CBI itself was made malafidely and the suspension order was made under sub-rule (1) of Rule 7 of the All India Service (Appeal and Discipline) Rules, 1955. In the said case, the report charged against the petitioner therein with an offence under the Prevention of Corruption Act, 1947. An FIR was also registered. After verification of the affidavits filed by the contesting parties, at Paragraph 10, the Apex Court held as follows:

> We are not concerned with the correctness and the propriety of the report. We have only to examine whether the order of suspension was warranted by the rule and also whether it was in honest exercise of powers. Ultimately, the Supreme Court dismissed the appeal filed by the petitioner therein.

39. When an order of suspension is made against a Government servant pending an enquiry into his conduct, the relationship of master and servant does not come to an end. What the appointing/disciplinary authority does in such a case is merely to suspend the Government servant from performing the duties of his office. The appointing/disciplinary authority passes an order, forbidding the Government servant from doing the work which he was required to do under the terms of the contract of service or the statute or rules governing his conditions of service, at the same time keeping in force the relationship of master and servant. The consequence of placing the government servant under suspension is that he would be entitled to his remuneration for the period of suspension unless there is some provision in the statute or rules governing his conditions of service which provide for withholding of such remuneration. Reference can be made to the decisions in Balwantray Rati Lal Patel v. State of Maharastra reported in AIR 1968 SC 800, U.P.Gindvoniya v. State of M.P., reported in AIR 1970 SC 1494, H.L.Mehara v. Union of India reported in AIR 1974 SC 1281 and State of M.P., v. State of Maharastra reported in AIR 1977 SC 1466.

40. In V.P.Gidroniya v. State of M.P., reported in 1970 (1) SCC 362, the Apex Court declared that three kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during pendency of an enquiry against him of the order appointing him or statutory provisions, governing his service, provide for such suspensions, governing his service provide for such suspensions. Lastly, he may merely be forbidden from discharging his duties during the pendency of an enquiry, both regulated by the contract of employment or the provisions regulating the conditions of service. But the last category of suspension referred to earlier is the right of the master to forbid his servant from doing the work which he had to do under the terms of contract of service or the provisions governing his conditions of service, at the same time, keeping in force the master s obligations under the contract. In the other words the master may ask his servant to refrain from rendering his service but he must fulfill

his part of the contract.

41. In Ashok Guar v. State of Rajasthan reported in 1978 (2) SLR 63, the Supreme Court has explained the extent of power of suspension. In the reported case, the government servant was alleged to have involved in corruption.

it is apparent that an order of suspension should not be passed by invoking powers under Rule 13 simply because a disciplinary proceeding is contemplated, or criminal case is under investigation or trial against a Government Servant. The Appointing Authority has to exercise his discretion in this regard. A Government Servant may be put under suspension in the contingencies referred to above. If there are reasons to believe, on the basis of the material available at the time of initiation of proceeding, that he may be guilty of gross misconduct or corruption which, if approved, will lead to dismissal or removal, he may be suspended even if the suspension is likely to continue for a longer period, or where there are reasons to believe that a Government Servant if allowed to continue in active service, might tamper with the evidence, he may be suspended or, in case a Government Servant is facing trial in a criminal court he should be suspended, if he has been refused bail and committed to prison. (emphasis supplied) In the above reported judgment, it was further observed that, This rule cannot be taken to confer arbitrary powers upon the appointing Authority to place a Government servant under suspension simply because a petty case of no importance is pending investigation or trial against a Government servant. While exercising power under Rule 13, in our opinion, the Appointing Authority must apply its mind and see whether it would be in the interest of the Government or in the interest of public at large to place the Government servant under suspension and the circumstances so warrant to place the Government servant under suspension. In every case, there should be proper application of mind before an action is taken against the Government servant for placing him under suspension.

42. Suspension depends upon the criteria, ie., whether it is necessary to keep an employee away from the post and seriousness of the charges can be taken into consideration. Useful reference can be made to the decision in T.L.Anantharaman v. Union of India reported in 1978 Lab.IC 759 = 1979 (1) LLJ 438 (Ker.).

43. Regarding the exercise of power of judicial review under Article 226 of the Constitution of India, particularly against an administrative order of discretionary nature, the Court must have in mind, the following observations, made by Prof. Wade, which are as follows:

> The doctrine that powers must be exercised reasonably has to be reconciled with no less important doctrine that the Court must nor usurp the discretion of the public authority, which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The Court must therefore resist the temptation to draw the bounds too lightly, merely according its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the Legislature is presumed to have intended. Decisions which extravagant or capricious cannot be legitimate. But if the

> decision is within the confines of reasonableness, it is no part of the court s function to look further into its merits.

44. In State of Tamil Nadu v. P.M.Balliappa reported in 1985 (2) LLN 362 (Mad.), this Court has held that the necessity or desirability to place the person under suspension is the objective satisfaction of the Government. More so, the Court cannot look into the sufficiency of material, but only the factum of satisfaction if the satisfaction is no satisfaction at all or it was formed on a consideration or there was total lack of application of mind.

45. In D.Uthirakumaran v. The Government of Tami Nadu reported in 1988 Writ.L.R. 229, the Division Bench at para 13 held that, "with regard to suspension pending enquiry, it is certainly not punitive in character. In such a case, it means the relationship of master and servant remains in abeyance for a temporary phase. It is an action in order to maintain purity of service when an employee is awaiting enquiry in regard to his suspended misconduct. As laid down in Hemant Kumar v. S.N.Mukerjea (AIR 1954 Cal. 340), the basic idea underlying the root word 'suspend' and all its derivations is that a person while holding an office and performing its functions or holding a portion or privilege should be interrupted in doing so and debarred for the time being from further functioning in the office or holding the position or privilege."

46. In Bhup Narayan Jha v. State of Bihar and others reported in 1984 (2) SLR 573, a Full Bench of the Patna High Court dealt with rule 49A of the Bihar Services (Classification, Control and Appeal) Rules, 1930, which rule is parimateria with rule 17 of the Tamil nadu Civil Services (Classification, Control and Appeal) Rules. Rule 49A of the Bihar Services (Classification, Control and Appeal) Rules, 1930 is extracted hereunder:

> "49(A)(1) :---The appointing authority or any authority to which it is subordinate or the Governor, by general or special order, may place a Government servant under suspension:
>
> (a) Where a disciplinary proceeding against him is contemplated or is pending; or,
>
> (b) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial."

The Full Bench dealing with the proviso and the need for suspension, explained its objects as follows:

> "In this context it become necessary to first consider the very nature of an order of suspension made either during the pendency of a departmental proceeding or in reasonable contemplation thereof. It is well settled that suspension is of two kinds -- one by way of punishment, and the other by way of a procedural aid to the holding of disciplinary proceedings. Admittedly herein we are concerned with the latter category. It seems to be undisputed that the concept of suspension during departmental proceeding has only the large objective of ensuring a free and fair

conduct of the enquiry that is either pending or is to follow. In this context, the fact that the suspension order is interlocutory or interim in nature can perhaps be hardly denied. The service rules invariably, if not inflexibly, provide for a subsistence allowance during the period and the delinquent official retains his lien on the post during the continuation of the departmental proceeding. This mellows the rigour of the order of suspension and in the event of the enquiry resulting in favour of the official, he would be invariably entitled to the revoking of the order of suspension and the reinstatement to the post with all the benefits of service and salary, (sometimes even without having worked during the said period), as may be provided in the rules. There is thus no finality or irrevocability attaching to an order of suspension, which, as already noticed, retains its character or being interim or interlocutory, in nature.

The object and purposes of placing a public servant under suspension during or in contemplation of a disciplinary proceeding may be manifold and do not call for any exhaustive enumeration. However, its salient features are well known and may call for a passing notice. Where serious allegations of misconduct are imputed against an official, the service interest renders it undesirable to allow him to continue in the post where he was functioning. In case where the authority deems a further and deeper investigation into the same as necessary, it become somewhat imperative to remove the official concerned from the spheres of his activities, as it may be necessary to find out facts from people working under him or to take into possession documents and materials which would be in his custody. Usually, if not invariably, it would become embarrassing and inopportune both for the delinquent official concerned as well as the inquiring authority to do so, while such official was present at the spot and holding his official position as such. It was sought to be contended that such a situation may be avoided by merely transferring the official. However, it would be for the authority concerned to decide whether such an official, against whom prima facie serious imputations have been levelled; should at all be allowed to function anywhere else. If it so decides, then suspension during the pendency or in contemplation of an inquiry might well become inevitable. It seems to be a fallacy to assume that suspension is necessarily and wholly related to the gravity of the charge. Indeed, it may have to be ordered to facilitate free investigation and collection of evidence. Just as criminal procedure is intended to subserve the basic cause of a free and fair trial, similarly, suspension as an interim measure in aid of disciplinary proceeding, is directed to the larger purpose of a free and fair inquiry. It would thus seem that the power of suspension is not only necessary, but indeed, a salutary power, if reasonably exercised either during the pendency or in contemplation of a disciplinary proceeding.

47. In Government of A.P., v. V.Sivaraman reported in 1990 (3) SCC 57, the respondent, who was an Assistant Labour Officer, trapped by Anti-Corruption Bureau for demanding and accepting a bribe of Rs.300/- for doing an official favour to a bus operator of Nellore District. The Anti-Corruption Bureau submitted a report to the Labour Commissioner about the involvement of the respondent in the corruption charges. Therefore, the respondent therein was placed under suspension under Rule

13(1) of the A.P. Civil Service (CCA) Rules, pending investigation of the case. The respondent challenged the order of suspension before A.P Administrative Tribunal and the Tribunal, without disturbing the suspension order, directed the Government to review the case of respondent as per rules. Pursuant to the orders of the Tribunal, the Government reviewed the case of respondent and issued an order, extending his suspension. In the mean while, the Anti-Corruption Bureau submitted its final report to the Government, seeking permission to prosecute the respondent and accordingly, sanction was accorded. Thereafter, a charge-sheet was filed against the respondent in the Special Court at Hyderabad and the same was pending trial. In the meantime, the respondent therein again approached the A.P. Administrative Tribunal, seeking revocation of the suspension order and also claimed full salary from the date of order of suspension. The Tribunal has revoked the order of suspension with certain directions. It was the contention of the Assistant Labour Officer that failure on the part of the Government to review the order within six months period, as required under Instruction 18 in Appendix VI to the A.P.C.A. (CCA) Rules, rendered the suspension order non est after six months. He further contended that the Government has limited powers to extend the suspension period, but that has to be done during the period of suspension being in force and any order issued subsequent to the expiry of six mouths cannot have retrospective effect, since the rule does not permit for extending suspension with retrospective effect. Per contra, the State contended that the Government instructions on which the Tribunal rested its conclusion, have no statutory force and secondly, the order of suspension after a period of six months would not become non est, giving an automatic right to reinstatement in service. In these circumstances, the Supreme Court, held that, . This is not a retrospective suspension order but an order further continuing the suspension. The conclusion of the Tribunal to the contrary proceeds on the wrong assumption that the first order of suspension has come to an end by the expiry of six months. Such an assumption is apparently unsustainable. There was no prescribed period of suspension in the first order. As we have already indicated it does not come to an end after six months.

48. In Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs. K. Ratnagiri reported in 1990(3) SCC 60, it was the case of lock up death. The respondent therein was placed under suspension with immediate effect in public interest. The respondent appealed to the Andhra Pradesh Administrative Tribunal, which set aside the order of suspension, holding that the employee shall be deemed to be in service from the date of issue of suspension order. The Tribunal, however, reserved liberty to the Government to transfer him to any other Police Station. It was held that the order of suspension became invalid after the period of six months, since the Government did not make a fresh order extending the period of suspension. It was further stated that the Director General has no power to keep the respondent under suspension pending investigation of the case against him. Hence, the appellant preferred an appeal. The Supreme Court, following the decision in Government of A.P. v. V.Sivaraman reported in 1990 (3) SCC 60, held that,

> The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges where such suspension is necessary in the public interest. When the first information report is issued, the investigation commences and indeed it has commenced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule 13(1) merely because it has used the word "prosecution' instead of investigation into the charges against the respondent. A wrong wording in the order does not take away the power if it is otherwise available. The tribunal seems to have

ignored this well accepted principle.

49. In A.C.Barot v. Distt. Supdt. Of Police reported in 1990 (5) SLR 725, the Apex Court held that the subjective satisfaction regarding suspension should be based on the objective consideration and relevant circumstances therefor.

50. Applying the principles of law laid down in the above judgments to the facts of the present case, if subjective satisfaction regarding suspension based on the objective consideration of keeping away a government servant alleged charge of corruption, from discharging his duties is arrived at by the appointing/disciplinary authority/government, the Court should not interfere with the decision of the said authorities. It is the public interest, which has to be given due importance in such matters and there is no question of considering private interests of the person, merely because, he is not allowed to enjoy the privileges attached to the post. It has to be noted that the Government servant has no absolute right to seek for retention in service, notwithstanding the gravity of charges, pending against him or particularly, where investigation into a crime or trial, involving moral turpitude, is pending. On the other hand, the appointing authority/disciplinary authority/Government, as the master, has the absolute right either to retain or suspend or to impose anyone of the major punishments of dismissal, removal and compulsory retirement, as the case may be, depending upon the outcome of the departmental enquiry or trial.

51. In U.P.Rajya Krishi Utpadan Manti Samiti Parishad v. Sanjiv Rajah reported in 1993 (2) LLJ 66, the Supreme Court was called upon to test the correctness of an order of suspension passed against a police officer, who was charged under Sections 394/397 IPC. The Supreme Court held that if the facts stated in the order of suspension disclose a charge involving moral turptitude in respect of which an investigation, inquiry or trial was pending, an order under Rule could not be said to be one suffering from the vice of arbitrary exercise of discretion. The appointing authority was not required to record reasons, apart from disclosing the facts that an investigation, enquiry or trial regarding a Criminal charge was pending against the concerned police officer such charge was connected with his petition as a police officer or was likely to embarrass him in discharge of his duties, involving moral turpitude. The impugned order in question does not disclose the entire facts, excepting the fact that a case under Sections 394/397 IPC had been instituted against the petitioner and the fact that such a charge involved moral turpitude, was not and could not be disputed. It would be, in fact, against public policy to allow a police officer charged with criminal offence under Section 394/397 IPC., to discharge his duties as such police officer until he was cleared of or was likely to be cleared off the charge in view of the material collected during investigation, enquiry or trial. The impugned order, neither suffers from the vice of male fide nor it can be said to have been passed without there being even a prima facie evidence on record connecting the petitioner with the misconduct in question. It was not shown to be arbitrary or whimsical. The function of the appointing authority under Rule 17(1) not being judicial, quasi-judicial or adjudicatory it was not necessary to record reasons.

52. The Supreme Court in the above reported case, further observed that what the appointing authority is required to do was to set out as much minimal facts in the order of suspension as may be sufficient to disclose that the charge against the police officer was connected with his position as

a police officer or was like to embarrass him in the discharge of his duties or involves moral turpitude. while exercising the power of suspension under rule 17 of the Rules, the appointing/disciplinary authority/government did not decide any lis nor did it act as a Tribunal and the nature of its function too was neither judicial or quasi-judicial. If it had acted in good faith and on relevant consideration and had not allowed itself to be influenced by irrelevant or extraneous consideration, an order of suspension would not be vitiated simply because it was not a reasoned one. All that was to be seen was whether the conditions indicated in the rules are fulfilled and the authority had acted in good faith enactuated by any malice. It was not necessary for the appointing authority to say expressly in the order of suspension, that the charge involved moral turpitude or that it was likely to embarrass the petitioner in discharge of his duties. The impugned order stands the litmus test of reasonable exercise of discretion and could not be frowned upon as arbitrary, unreasonable or capricious. This, Court, while exercising power of judicial review under Article 226 of the Constitution should not ordinarily interfere with the orders of suspension unless they are passed mala fide and without there being even prima facie evidence on record connecting an employee with the misconduct in question.

53. In R.P.Dubey v. State of U.P., reported in 1994 (1) SLR 164 (MP), the Court observed that the Court could interfere with the order of suspension only in a clear cut case of breach of statutory provision or mala fide was found established, otherwise Courts must be reluctant to interfere with the same.

54. In State of Orissa v. Bimal Kumar Mohanty reported in 1994 (4) SCC 126, while the respondent was working as Manager of Orissa State Guest House at Bhubneswar, the Government Audit Department audited the accounts for the periods from 1984-85 to 1990-91 and noted serious financial irregularities, fabrication of records and vouchers and misappropriation to the tune of Rs 163.59 lakhs. Thereafter certain other financial irregularities relating to purchase of woollen carpets etc. apart from suppression of audit objections had also come to light. On March 17, 1993, the appointing authority, after considering the record, passed an order directing inquiry into the irregularities and also decided to keep him under suspension pending further action. On the same day, the State Administrative Tribunal, Bhubneswar, by an interim order, directed not to suspend the respondent. Subsequently, the Vigilance searched the respondent s house and found him to be in possession of disproportionate assets to the tune of Rs.11.44 lakhs. Accordingly, the crime was registered in Crime No.46 under Section 3(2) read with Section 13(1) of the Prevention of Corruption Act, 1947 and continued with the investigation. Based on the above, the petitioner therein was placed him under suspension and again, the Tribunal suspended the suspension order. The State Government took the matter on appeal directly to the Supreme Court. After considering various judgments in R.P.Kapoor v. Union of India reported in AIR 1964 SC 787, Balwantray Rati Lal Patel v. State of Maharastra reported in AIR 1968 SC 800 U.P.Gindvoniya v. State of M.P., reported in AIR 1970 SC 1494, Government of India, Ministry of Home Affairs v. Tarak Nath Ghosh reported in 1971 (1) SCC 734 and U.P.Rajya Krishi Utpadan Manti Samiti Parishad v. Sanjiv Rajah reported in 1993 (2) LLJ 66, the Supreme Court, at Paragraphs 13 and 14, held as follows:

> 3. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or

contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent s continuance in office while facing departmental inquiry or trial of a criminal charge.

14. On the facts in this case, we are of the considered view that since serious allegations of misconduct have been alleged against the respondent, the Tribunal was quite unjustified in interfering with the orders of suspension of the respondent pending inquiry. The Tribunal appears to have proceeded in haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority. The contention of the respondent, therefore, that the discretion exercised by the Tribunal should not be interfered with and this Court would be loath to interfere with the exercise of such discretionary power cannot be given acceptance."

The Supreme Court further held that the authority should also keep in mind public interest of the impact of the delinquent s continuance in office while facing departmental enquiry or trial of a criminal charge.

55. It is useful to extract the judgment made in Ministry of Home Affairs v. Tarak Nath Ghosh reported in 1971 (1) SCC 734, considered in Biman Kumar Mohanty s case (cited supra) and they

are reproduced hereunder:

> Serious allegations of corruption and malpractices had been made against the respondent, a member of the Indian Police Service, serving in the State of Bihar. Inquiries made by the State Government revealed that there was a prima facie case made out against him. He was suspended by an order which stated that disciplinary proceedings were contemplated against the respondent.
>
> On the question whether the suspension of a member of the service can only be ordered after definite charges have been communicated to him in terms of Rule 5(2) of the All India Services (Discipline and Appeal) Rules, 1955, or whether the Government is entitled to place him under suspension even before that stage has been reached after a preliminary investigation.
>
> Held: (1) The fact that in other rules of service there is specific provision for an order of suspension even when disciplinary proceedings were contemplated, does not mean that a member of the All India Service should be dealt with differently. It would not be proper to interpret the Rules, which form a self-contained Code, by reference to the provisions of other rules even if they were made by or under the authority of the President of India.

56. In A.Abdul Gani v. The Superintending Engineer reported in 1996 (1) MLJ 52, following a complaint with the vigilance and Anti Corruption Department, Dharmapuri, a trap was laid, during which currency with Rs.100/- was recovered from the petitioner therein and another person. He was placed under suspension pending enquiry into grave charges. The memo also read that the petitioner has been arrested by the police for accepting bribe and since an enquiry into grave charges was contemplated, he was placed under suspension pending enquiry. It was also stated in the memo that the suspension was in public interest. The order of the suspension was challenged on the following grounds.

> "(i) The power to suspend an employee should be carefully and sparingly exercised. The relevant portion of the Regulation relied on by the learned Counsel for the petitioner reads as under:
>
> A Board employee should be placed under suspension only if his continuance in office will be clearly detrimental to the public interest, e.g. by giving him an opportunity to continue in his malpractices or to tamper with the investigation or conduct of the disciplinary proceedings. If it is possible to retain a person in an unimportant post, pending investigation, or enquiry, suspension should not be resorted to. If a transfer from one place to another is considered sufficient, suspension should be avoided....

57. Before addressing the issues, this Court has broadly set out the principles dealing with the power of the competent authority in placing an employee under suspension, the need and its effect etc., "By

reason of suspension, the person suspended does not lose his office nor does he suffer any reduction in rank. He only ceases to exercise the powers and to discharge the duties of the office for the time being. His powers, functions and privileges remain in abeyance but he continues to be subject to the same authority. He cannot seek employment elsewhere though he does not perform his normal duties. During the period of suspension he is paid subsistence allowance, which is normally less than his salary, instead of the pay and allowances he would have been entitled to if he had not been suspended. It is true that suspension causes great mental agony to the person concerned. The suspended employee suffers from a sense of degradation in the eyes of his colleagues, friends and relations. He also suffers from certain other disadvantages in his service conditions like confirmation and promotion. However, so far as the Board is concerned, it has to pay the suspended employee, subsistence allowance during the period of suspension without taking any work from him. In the case of an employee who is exonerated of his charges in a departmental proceeding or who, if prosecuted in a criminal charge, is acquitted of his criminal charge, he is entitled to payment of full pay and allowances for the entire period of his suspension even though he did not do any work for the Board for this period. Courts have held that the power of ordering suspension should be exercised carefully and with restraint and before a suspension order is issued, one must be clear in one's mind that it is necessary and unavoidable. The management can suspend an employee if his continuance in office will be clearly detrimental to the public interest. It is also held by Courts that if it is possible to retain a person in a unimportant post, pending investigation or enquiry, suspension should not be resorted to. If a transfer from one place to another is considered sufficient, Courts have held, that suspension should also be avoided. As seen already, suspension not only causes hardship and mental agony to the employee concerned but also causes additional expenditure to the Board.

58. Repelling the contentions of the petitioner therein stated supra, this Court at para 7, 8 and 11 held as follows:

> "7. The contention of the learned Counsel for the petitioner that the suspension of the petitioner will create hardship, prejudice and humiliation as well as financial loss to the petitioner cannot at all be accepted. The Board feels that the continuance in office of the petitioner, in the light of the grave charges, would be detrimental to the public interest and if the petitioner is allowed to continue in office, he will definitely tamper with investigation. In the light of the enquiry into grave charges of misconduct, it is not possible for this Court to advise the Board to retain the petitioner even in an unimportant post pending investigation or to transfer him to any other place. Therefore, I reject the first contention.
>
> 8. This apart, the contention of the petitioner that his suspension will cause financial loss to him and therefore such an order must be passed after application of mind, cannot at all be countenanced. As already seen, the petitioner is suspended pending an enquiry into grave charges. The order of suspension will not in any way affect the petitioner. During the period of suspension, the Board has to pay him subsistence allowance without taking any work from him and ultimately if he is exonerated of the charge in a departmental proceedings or if he is acquitted of any criminal charge, he

> is entitled to payment of full pay and allowances for the entire period of suspension even though he did not do any work for the Board during the period. Therefore, this contention also fails.

59. In Balkrishna Nair v. State of Kerala reported in 1996 (3) LLN 338, the Kerala High Court held that the Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but was only one of forbidding or disabling an employee to discharge the duties of office or post held by him. It would be another thing if the action was actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent s continuance in office which facing departmental enquiry or trial of a criminal charge. In other words, it was so refrain him to avail further opportunity to perpetuate he alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry.

60. In Allahabad Bank v. Deepak Kumar Bhola reported in 1997 (4) SCC 1, the respondent was an bank employee. CBI/SPE conducted an investigation and registered a case. Pursuant to which, the Superintendent of Police asked the bank to accord sanction for prosecuting the respondent. The Bank accorded the requisite sanction and resorting to Clause 19.3 of the First Bipartite Settlement, 1966 suspended the respondent. A charge-sheet was filed in the court by the police showed that the respondent had participated in false issuance of cheque books and had withdrawn money through a fake account in another bank by depositing the cheques issued from those cheque books. The High Court set aside the suspension order. The Bank preferred an appeal to the Supreme Court. After considering the serious nature of the offence, involving moral turpitude, the Supreme Court, at Paragraph 10, observed as follows:

> 0. In our opinion the aforesaid observations correctly spell out the true meaning of the expression moral turpitude . Applying the aforesaid test, if the allegations made against the respondent are proved, it will clearly show that he had committed an offence involving moral turpitude and, therefore, the appellant had the jurisdiction to suspend him under the aforesaid clause 19.3. The High Court observed that there was nothing on record to suggest that the management had formed an opinion objectively on the consideration of all relevant material available against the petitioner that in the circumstances of the case the criminal acts attributed to the petitioner implied depravity and vileness of character and are such as would involve moral turpitude. It did not regard entering into a criminal conspiracy to commit the aforesaid offences as being an offence involving moral turpitude. We are, to say the least, surprised at the conclusion which has been arrived at by the Allahabad High Court. There was material on record before the appellant, in the form of the report of the CBI/SPE, which clearly indicated the acts of commission and omission, amounting to moral turpitude alleged to have been committed by the respondent. Furthermore the

respondent has been charged with various offences allegedly committed while he was working in the Bank and punishment for which could extend up to ten years imprisonment (in case the respondent is convicted under Section 467 IPC). (emphasis supplied) The Supreme Court set aside the order of the High Court, quashing the order of suspension.

61. In Shiv Ram Mishra v. Controller, Legal Metrology (Weights and Measures) reported in 1998 (50) FLR 25 (All.), the Government servant was charged with an offence punishable under the Prevention of Corruption Act. When the order of suspension was challenged, the Court held that the appointing authority had passed the impugned order of suspension on a proper self-direction to the relevant factors and after arriving at a prima facie finding that it would not be in public interest to allow the petitioner to continue on the post. The offences punishable under the Prevention of Corruption Act is certainly an offence involving moral turpitude and his continuance on the post would certainly embarrass him in discharge of his duties.

62. In State of M.P., v. Ram Singh reported in 2000(5) SCC 88, on the basis of the secret information that an officer in the Excise Department had earned moveable and immovable properties, allegedly, disproportionate to his known sources of income, a case under Sections 13(1)(e) and 13(2) of the Act was registered against. Initially, the investigation was conducted by a Deputy Superintendent of Police, Special Police Establishment, Gwalior, and thereafter, by an Inspector, Special Police Establishment, who stated to have been duly authorized by the Superintendent of Police, SPE, vide order, dated 12.12.1994, issued under Section 17 of the Prevention of Corruption Act, 1988. After investigation, sanction was obtained and charge sheet was filed. Exercising its powers under Section 482 Cr.PC., the Madhya Pradesh High Court quashed the investigations and consequent proceedings on the ground for the offence punishable under Section 13(1)(e) of the Act and the investigation had not been conducted by an authorized officer in terms of Section 17 of the Act. Testing the correctness of the said order, the Supreme Court has explained the evil effects of the Corruption. Useful reference can be made to Paragraphs 8 to 11 of the above reported case.

8. Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to maliganise (sic) the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.

9. The menace of corruption was found to have enormously increased by the First and Second World War conditions. Corruption, at the initial stages, was considered confined to the bureaucracy which had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war the opportunities for corruption continued as large amounts of

government surplus stores were required to be disposed of by the public servants. As a consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of post-war reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants giving them a wide discretion with the result of luring them to the glittering shine of wealth and property. In order to consolidate and amend the laws relating to prevention of corruption and matters connected thereto, the Prevention of Corruption Act, 1947 was enacted which was amended from time to time. In the year 1988 a new Act on the subject being Act 49 of 1988 was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of the 1947 Act. The law relating to prevention of corruption was essentially made to deal with the public servants, not as understood in common parlance but specifically defined in the Act.

10. The Act was intended to make effective provisions for the prevention of bribery and corruption rampant amongst the public servants. It is a social legislation intended to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object. Dealing with the object underlying the Act this Court in R.S. Nayak v. A.R. Antulay, held: (SCC p. 200, para 18)

8. The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act, namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it.

11. Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and deciding cases under it. (emphasis supplied)

63. In V.N.Purushothaman Putti v. State bank of Travancore reported in 2000 (85) FLR 23 (Ker.), a Division Bench of the Kerala High Court was called upon to adjudicate the correctness of an order of a learned single judge, dismissing the challenge to the order of suspension passed against a cashier/clerk of a bank. The Division Bench held that an order of suspension is an administrative order and not a quasi judicial order of suspension does not put on end to service. Real effect of the order of suspension is that though the Civil Servant continues to be a member of service, he is not permitted to a work and is paid only subsistence allowance, which is less than the salary. Suspension merely suspends the claim to salary. In passing an order of suspension, the authority is bound to

take into consideration, the gravity of misconduct sought to be enquired into or investigated and the nature of the offence placed before the authority. There should be an application of mind. It should not be an administrative routine or an automatic order to suspend an employee.

64. When the authority has considered the gravity of the charge, pending trial and placed the government servant under suspension pending trial, it is not for this Court to substitute its views to that of the authority and order reinstatement, solely on the ground, there is no progress in the trial. Merely because, there is no progress in the criminal Court, the serious charge of corruption or other charges, involving moral turpitude, levelled against the government servant, does not get wiped out and when the competent authority has exercised its discretion to refrain the government servant from discharging its duties and enjoying the privileges, the said discretion cannot be said to be arbitrary, irrational or contrary to the rules. All that is necessary for the Court is to find out as to whether there is any bona fide decision to refrain the government servant temporarily from attending the office and performing the duties and also to establish before the Court that such action was necessitated for an enquiry, either instituted or to be instituted the disciplinary proceedings or investigation or trial of the criminal proceedings, in respect of serious offence, involving moral turpitude alleged against the government servant.

65. An order of suspension, during the pendency of the disciplinary inquiry, is ordinarily not to be interfered with by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India, unless and until, the Court comes to a conclusion that the order was mala fidely passed; or that the appropriate authority had not passed the order of suspension. Useful reference can be made to the decision in New India Assurance Co. Ltd., v. S.M.I. Kazim reported in 2001 (90) FLR 1125 = 2001 (1) LLJ 1700(SC)]. Similar view has been expressed in Rajiv Sharma v. State of U.P., reported in 1994 (69) FLR 491 (All.).

66. In Gyan Singh Parihar v. State of U.P., reported in 2002 (92) FLR 406 (All.), a Division Bench of the Allahabad Court tested the correctness of the order of suspension pending proposed disciplinary enquiry against an employee relating to serious charges of fraud, embezzlement, bribe etc., At para 4 and 5 of the judgment the Division Bench held as follows:

> "4. Whether an employee should or should not continue in his office during the period of disciplinary enquiry is a matter to be assessed by the concerned authority and ordinarily, the Court should not interfere with the order unless it is demonstrated to be mala fide and without there being a prime fade evidence on record connecting the employee with the misconduct in question. See U.P. Rajya Krishi Utpadan Mandi Partshad and Ors. v. Sanjiv Rajan (cited supra).
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> 5. It has not been demonstrated before the Court that the order is mala fide and without there being a prime facie evidence on record connecting the petitioner with the alleged misconduct, warranting interference by this Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India.

67. In M.K.Dange v. The Chairman cum Managing Director, Oil and Natural Gas Corporation Ltd., and others reported in 2003 (3) MLJ 544, an order of suspension passed by the General Manager (F & A), and confirmed by the Chief Engineer (F & A) of Oil and Natural Gas Corporation Ltd., were challenged on the grounds, (1) That there was prolonged suspension for over 10 years, without there being any disciplinary proceedings conducted nor criminal proceedings initiated came to an end. (2) The respondents therein were not empowered to place the petitioner under suspension under Regulation 33 of the Oil and Natural Gas Corporation (Conduct, Discipline and Appeal) Regulations, 1976, inasmuch as on the date of suspension, neither disciplinary proceedings was contemplated nor the petitioner engaged himself in the activities prejudicial to the interest of the Secretary of the State and (3) Another involved in the offence was not placed under suspension and allowed to continue. Points 2 and 3 are not relevant for the purpose of this present writ petition. In the reported case, a judgment of this Court in A.Bhoopalan v. The Assistant Director, Khadi and Village Industries, Villupuram and another reported in 2002 WLR 546, was relied on and further contended by the petitioner that prolonged suspension was bad in the eye of law. Per contra, applying the judgment of the Apex Court in Allahabad Bank and Anr. v. Deepak Kumar Bhola reported in (1997) I LLJ 854 SC, this Court, at Paragraph 6 of the judgment in Dange's case, held that, . Coming to the facts of the present case, the petitioner is admittedly facing criminal charges not only under the provisions of Indian Penal Code but also under the provisions of Prevention of Corruption Act and the same is not in dispute. Though detailed arguments were made on the basis of the seriousness of the charges, I do not propose to traverse the same as any discussion or finding on merit will adversely affect the rights of both the petitioner and the respondents. Suffice for me to take into consideration of the fact that the petitioner as of now is facing criminal charges of corruption. In the circumstances, in my considered view, the judgment of the Apex Court in Allahabad Bank's case (supra) is alone applicable to the facts of this case.

68. In Union of India v. Rajiv Kumar reported in 2003 (6) SCC 516, the respondent was arrested on 26-3-1998 for allegedly accepting bribe and was released on bail on 2-4-1998. The order purportedly was made under sub-rule (2) of Rule 10 to formally place on record was passed on 15-5-1998. The prosecuting agency filed a challan on 2-9-2000. On 11-10-2000, the respondent filed an application for interim relief. On 9-11-2000, an order was passed by the authorities continuing suspension. The Delhi High Court quashed the suspension order, dated 15.05.1998 and held that an order of suspension after release of the petitioner on bail could have been passed only under Rule 10(1) and not under Rule 10(2). It was further held that a combined reading of Rules 10(1) to 10(5)(a) makes the position clear that the order of suspension was effective for the period of detention only and not beyond it where by legal fiction a person is deemed to be under suspension for remaining in custody for a period exceeding 48 hours. The respondent did not challenge the suspension order, dated 09.11.2000. The appellant Union of India contended that the High Court s interpretation was adding words to Rule 10(2) which, in view of the clear and unambiguous language of the provision, was impermissible. The respondent has contended that continuance of suspension for a very long period rendered the same as invalid. After considering the rival contentions, the Supreme Court, at Paragraph 29, held that the plea that continuance of suspension for a very long period renders it invalid, is not tenable. The period of suspension should not be unnecessarily prolonged but if plausible reasons exist and the authorities feel that the suspension needs to be continued, merely because it is for a long period that does not invalidate the suspension.

69. In W.P.No.14406 of 1999 dated 19.06.2003 [State of Tamil Nadu represented by the Secretary Vs. S.Noor Mohammed], a public servant therein was caught red handed while accepting bribe. He was arrested and thereafter suspended with effect from the date of arrest. He challenged the order of suspension. The Administrative Tribunal, Madras, dismissed the original application on the ground that there was no limitation for the continuation of suspension, in new of clause 6(ix) of G.O.Ms.No.40 Personnel and Administrative Reforms Department, dated 30.01.1996, as there would be no question of limiting the continuation of suspension. When the delinquent challenged the suspension order by filing another application, the Tribunal allowed the original application on the only ground that the suspension was continuation for more than two years. When the order of the Tribunal was challenged, this Court, by an order, dated 19.06.2003, held as follows:

> "(5) In our opinion, the learned Special Government Pleader is undoubtedly right in making this statement because, in our opinion, the Tribunal could not have found this fancy period of two years as unreasonable and could not have arbitrarily fixed any such period being an unreasonable period. The Tribunal has not bothered to mention any facts in the order not has the Tribunal bothered to support its view by any case law or any rule or any Government Order. In fact, the Government Orders are clear that where the criminal prosecution is pending, there would be no question of limiting the suspension to a particular period. It is only in the case of departmental enquires, where there are no criminal prosecution that there are certain rules for limiting the period of suspension. They do not apply universally to even the cases where the criminal prosecution like the serious offence of bribery are pending. In that view we are not at all satisfied with the order of the Tribunal and would choose to set it aside."

70. It should be noted that this Court has considered the applicability of G.O.Ms.No.40, P & AR Department, dated 30.01.1996, and held that in cases of suspension, where criminal protection is launched, where a serious offence of bribery is involved, the guidlines fixing the time limit for review of suspension is not applicable. The said judgment is squarely applicable to the facts of the case. Therefore, the contention of the Learned Senior Counsel for the petitioner that the second respondent has failed to consider the applicability of the Government order to the facts of this case, before rejecting the application for revocation, is untenable. In this context, it is useful to extract the relevant portion in G.O.Ms.No.40, P & AR Department, dated 30.01.1996, "The time limits ordered in the above paragraphs will not be applicable to cases of Government servants against whom criminal proceedings have been initiated."

71. There is no statutory provision for review of suspension in the case of criminal cases and the time limit prescribed in the abovesaid G.O., is not applicable, when suspension is resorted to, pending investigation into a criminal case or trial. When the executive order issued by the Government does not clothe the Government, any right to claim revocation of suspension or mandate the appointing/disciplinary authority to apply the said G.O., the petitioner who has been charge sheeted under the prevention of Corruption Act, 1988, has no statutory right to seek for review, as a matter of right.

72. In Hari Singh Mathur v. State of Rajesthan reported in 2004 (101) FLR 124 (Raj.), the petitioner therein was suspended and he was facing trial for offences under the Prevention of Corruption Act and sanction to prosecute him was accorded by the state. When the suspension was challenged, the Rajasthan High Court held that "2. By the instant writ petition, petitioner has challenged the order dt. 8.4.2003 by which he was suspended. Nothing was contemplated and during the enquiry, he was suspended. Suspension cannot be said to be a punishment. The petitioner is facing enquiry relating to matter in which the FIR was lodged by Anti Corruption Bureau.

3. It is settled legal proposition that during suspension, relationship of master and servant continues between the employer and the employee. However, the employee is forbidden to perform his official duties. In certain cases, suspension may cause stigma even after exoneration in the departmental proceedings or acquittal by the criminal court, but it cannot be treated as a punishment even by stretch of imagination in strict legal sense.

73. In The State of Maharashtra through the Addl. Chief Secretary to Government, Home Department and Asst. Commissioner of Police Vs. Kishor Bhalchandra Kulkarni, Govt. Service as Sr. Grade Clerk Commissioner of Police reported in 2006 (1) BomCR 117, the Maharastra Administrative Tribunal, Mumbai Bench, set aside the orders of suspension passed against the respondents, who were charged with offences of Prevention of Corruption Act. All of them were trapped by the anti-corruption bureau and were caught red handed and in pursuance thereof, criminal cases were registered against them under the provisions of the said Act. Based on the report of anti-corruption bureau, the respondents therein were placed under suspension under various dates. Their request for revocation of suspension orders was declined and challenging the same, they filed an Original Application before the Tribunal, contending inter alia that they were under suspension for 18-24 months, which has caused tremendous hardship not only to them, but to their families and, secondly, hearing of their cases is not likely to commence in near future and hence they may be reinstated. The Tribunal, while quashing the order of suspension, observed as follows:

> 0. Irrespective of the ground of discrimination, the fact remains that in these cases the applicants have been placed under suspension for over 18 months in almost all cases and in some cases for nearly two years. It is not the case of the Respondents that the applicants are likely to tamper with evidence or influence the witnesses. The charge sheet have been filed in all these cases. However, the trials in these cases may take their own time. It will be unfair to place the applicants under suspension till these cases reach a final stage. The observation made by this Tribunal in O.A. 323/1999 that the applicants, by being placed under suspension will not be allowed to repeat the misconduct can be taken care of by giving directions that the applicants should be given non-executive postings. I do not consider it necessary to deal with the other arguments advanced by the learned advocate for the applicants."
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> The order made by the Tribunal was challenged before the Division Bench of the Mumbai High Court. Placing reliance on K.C. Sareen v. C.B.I., Chandigar, reported in 2001 CriLJ 4234, Allahabad Bank and Anr. v. Deepak Kumar Bhola reported in

(1997) I LLJ 854 SC and U.P. Rajya Krishi Utpadan Mandi Parishad and Ors. v. Sanjiv Rajan reported in (1993) II LLJ 958 SC, it was inter alia contended by the State that the tribunal has committed a manifest error of law in allowing the original applications filed by the respondents, merely on the ground that the respondents have been placed under suspension for over 18-24 months and their trials will take long time and that there is no likehood of tampering with evidence or any witness. Having regard to the nature of offence, involving moral turpitude, the Division Bench of the Bombay High Court, at Paragraphs 8, 9 and 11, held as follows:

8. It is against this backdrop, in our opinion, it would be indeed inconceivable that the petitioners should allow the respondents to resume on duty when they are facing serious charges of corruption. Allowing such employee to remain in seat would result in giving him further opportunity to indulge in the acts for which he is being prosecuted. Merely because the respondents are under suspension for over 18-24 months cannot be a ground to pass the order of reinstatement. The Apex Court in Allahabad Bank and Anr. (supra) has made it clear that "the mere fact that nearly ten years have elapsed since the charge-sheet was filed, can also be no ground to allow the respondents to come back to duty on a sensitive post, unless he is exonerated of the charge". In that case a delinquent was an employee of the Bank who allegedly had committed forgery and wrongful withdrawal of money and was under suspension. The Apex Court had further observed that ordinarily, when there is accusation of corruption, the delinquent has to be kept away from establishment till the charges are finally disposed of.

9. It is possible that in some cases a trial of the case may not begin early and as a result of which sufferings of the concerned public servant may prolong but that does not mean that the deliquent employee who is placed under suspension on the charges of corruption be reinstated and allowed to resume duty. The remedy in such cases for the delinquent is to approach the concerned court where his trial is pending for disposal and in such cases it is for that court to pass order either expediting hearing of the case or decide the case within time frame. In any case the ground of delay in disposal of case of the delinquent who is placed under suspension on the charge of corruption cannot be and should not be a ground for reinstatement irrespective of the fact whether or not such reinstatement is in non executive post.

11. We draw support from the aforesaid observations of the Apex Court to hold that a public servant who is charged of corruption should be kept away from the office until he is judicially absolved. Merely because a trial of such public servant is being delayed, that by itself should not be a ground for passing an order of reinstatement. If such public servant is reinstated and allowed to continue to do official acts until he is judicially absolve from the charge of corruption, by reason of reinstatement order it is public interest which suffers and sometimes even irreparably. When such public servant is allowed to hold public office, it would impair the morale of other persons manning such office and consequently that would erode already shrunk confidence of

> the people in such public institution besides demoralising the other honest public servants who would either be his colleagues or subordinates. If honest public servants are compelled to take orders from officer, facing charges of corruption on account of setting aside the suspension the fallout would be one of shaking the system itself. As against this if a public servant, who is facing the charge of corruption, is acquitted in trial or is finally absolved of the charge of corruption, the order of suspension can always be revised and if such public servant is reinstated he will be entitled to all the benefits to which he would have been entitled to had he continued in service. It is also open for such public servant to approach the appropriate court for expediting the trial but he cannot seek reinstatement on the ground that the trial is not likely to commence early or is likely to be prolonged.

While allowing the writ petitions filed against the orders of the Tribunal, the Division Bench has given liberty to the respondents to move the concerned Court for early disposal of the criminal case made against them.

74. In yet another judgment in State of Maharashtra and Ors. v. Subhashchandra Bapusaheb Patankar, reported in 2006(6) BomCR 373, the challenge was against the order of the Maharashtra Administrative Tribunal which directed to revoke the order of suspension made against the respondent, who was arrested by the Anti-Corruption Bureau. Challenging the order of suspension on the grounds that no charge-sheet was filed in the criminal case though a period of seventeen months had elapsed and that the trial is likely to take a long period of time and that there is no likelihood of the delinquent tampering with the witnesses. The respondent therein contended that the authorities should revoke the order of suspension. In the reported case, the respondent therein was holding the post of a Deputy Education Officer (Secondary) at Kolhapur. He was in-charge of work pertaining to litigation and an Assistant Teacher had filed an application before the School Tribunal at Kolhapur. The Assistant Teacher lodged a complaint with the Anti Corruption Bureau and a trap was laid. In the course thereof, the respondent was arrested while he was accepting a bribe of Rs.10,000/- and C.R.No.3 of 2004 was registered by the Shahupuri Police Station at Kolhapur. Lateron, he was placed on suspension under the provisions of the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979 by the Joint Secretary in the School Education Department of the State of Maharashtra. The respondent herein also contended before the Tribunal that that no charge-sheet had been filed even though a period of fifteen months had elapsed from the date of the incident and the order of suspension. The respondent relied on a Government Resolution, dated 3rd April, 2000 and contended that he had made a representation claiming reinstatement, no orders were passed. Per contra, the State of Maharashtra, filed a counter affidavit and contended inter alia that sanction had been granted by the Government for filing a charge-sheet against the respondent and that he was arrested, while accepting bribe. The Tribunal allowed the original application. While testing the correctness of the order made by the Tribunal, the Division Bench, at paragraph 7, held as follows:

> The power to institute disciplinary proceedings against an erring employee on a charge of misconduct lies solely within the province and jurisdiction of the employer and the position is no different when the employer happens to be the State. In every

> case it is for the employer to determine as to whether the charges are of a nature that should be examined or investigated into by convening disciplinary proceedings. Whether an employee should be suspended during the pendency of disciplinary proceedings is a matter for the employer to determine, a decision which the employer will arrive at in the best interest of the service. The question as to whether an employee who is under a cloud is likely to tamper with witnesses pending a disciplinary enquiry, may at the highest be one of the factors that would be considered by the employer. Equally if not more important, the employer is required to consider the nature of the charges, the surrounding circumstances of the case, and the impact on the morale of the establishment of keeping an employee who is being proceeded against with, on a serious charge of misconduct on duty pending disciplinary proceedings. A trap case of the kind involved here where an employee of the State has been arrested allegedly while accepting the bribe, involves a serious act of misconduct and it would be wholly inappropriate for the Tribunal to direct revocation of suspension. Interference by the Tribunal in such cases is liable to give rise to the belief that brazen acts in violation of public morals can be committed with impunity by public officials, forming the belief that this would not invite any disciplinary consequence. Even as a matter of first principle, Courts must avoid such interference since it is manifestly within the disciplinary jurisdiction of the employer to determine whether an employee should be placed under suspension.

75. In State Bank of India v. Rattan Singh reported in 2010 (10) SCC 396, the respondent was placed under suspension on 23.07.1993 for certain acts of misconduct involving a sum of Rs.3 Lakhs against a Cheque, dated 19.07.1993, in respect of an alleged current account in the name of Mr.H.P.Sharma, which current account was not existing. An FIR was lodged on 30.09.1993, after the appellant-Bank collected the relevant documents, along with other evidence. Thereafter, an investigation was conducted by the CBI and that a criminal case was filed. The respondent therein filed a writ petition, challenging the order of suspension, contending inter alia that no departmental enquiry was initiated and that he was kept under suspension for more than three years. The High Court dismissed the said writ petition, challenging the order of suspension. The Division Bench, set aside the same and therefore, the bank preferred an appeal to the Supreme Court.

76. After considering the judgment made in Allahabad Bank v. Deepak Kumar Bhola reported in 1997 (4) SCC 1, the Supreme Court allowed the appeal filed by the Bank, holding that the suspension is valid on the basis of its earlier decision in Punjab National Bank v. Jagdish Singh reported in 1998 (9) SCC 265, where the Supreme Court had already taken a view that the Bank has the power to suspend the employee under the Bipartite Settlement clauses.

77. It is to be noted that in the above reported case that one of the contentions raised before the Supreme Court was that though criminal prosecution was launched, no departmental enquiry was initiated and that the respondent therein was kept under suspension for more than three years. The Supreme Court further held that the order of suspension cannot be faulted, merely because, there was no progress in the disciplinary proceedings.

78. Corruption is forbidden by law, an offence involving moral turpitude or exactly opposite of dishonesty involving intentional disregard to law. When the misconduct of the government servant attracts criminal liability, for which, penal laws provide for severe punishments, like sentencing to rigorous imprisonment, the period depending upon the gravity of the offence, like in the instant case, imprisonment for a maximum period of 7 years, besides fine or both, it should be left to the absolute discretion of the appointing/disciplinary authority/government to place a government servant under suspension, pending investigation/trial. Persons involved in serious charges of corruption, embezzlement, misappropriation of government funds or crimes attracting severe punishments cannot be equated with others, discharging their duties honestly. Courts should not obstruct the powers of the appointing/disciplinary, authority/government, from forbidding such persons from discharging their duties, atleast till the trial is over. In M.K.Dange v. Chairman-cum-Managing Director, Oil and Natural Gaz Corporation reported in 2006 (2) MLJ 34, has held that even after acquittal, suspension does not automatically come to an end, until the order is revoked by the authorities.

79. The object of the Prevention of Corruption Act and the purpose of empowering the authorities to place the government servant, under suspension, pending investigation or trial, of criminal offences, involving corruption and other grave offences, involving moral turpitude, should not be defeated by restoring them in service. It should be noted that persons with criminal antecedents are not even inducted in service. They are prevented entry into government servant and police verification of antecedents helps the employer for this purpose. While that be the settled position, a government servant, after entering into service, faces trial for grave offences, should be kept out of the sphere of activities, with reference to discharge of duties and privileges attached to the post, pending trial. The provisions of Prevention of Corruption Act and the powers conferred on the authorities to place him under suspension are intended to maintain clear administration and in public interest and in such circumstances, there is no question of considering the private interest, of the government servant, which is temporarily deprived of his duties.

80. No Government servant, particularly a person charged with a misconduct of corruption, has right to insist that he should be retained in service and allowed to discharge his duties and enjoy the privileges of the post held by him, during the pendency of the enquiry into grave charges or trial, involving moral turpitude and it is the absolute discretion of the appointing/disciplinary authority or the Government to suspend such government servant from discharging the duties attached to the post and to forbid him from exercising the privileges, except to the extent of payment of salary, regulated in the Statute or rules, applicable to the case of such Government servant.

81. For the purpose of suspension, it is sufficient that the competent authority has arrived at a prima facie conclusion that the Government servant has committed a serious misconduct, which entails major penalties, like dismissal, removal or compulsory retirement, etc., from service. Illustrative cases, where action has to be taken immediately, are persons, involving in serious acts of misdemeanor, such as, (a) offence or conduct involving moral turpitude, (b) corruption, embezzlement or misappropriation of Government money, (c) possession of disproportionate assets, (d) misuse of official powers for personal gain, (e) serious negligence or dereliction of duty, (f) desertion of duty and (g) refusal or deliberate failure to carry out written orders of superior

officers; (h) apprehension of tampering with witnesses or documents or likelihood of causing prejudice to an inquiry, investigation or trial; (j) likelihood of subversion of discipline in office; (k) involvement of scandals, and (l) likelihood of ultimate conviction out of departmental proceedings, and in all these illustrative cases, it is the matter of necessity and public interest, involved and therefore, it which must be left to the absolute discretion of the competent authority, with whom, the power is vested to suspend and that such discretion exercised in public interest should not be interfered with lightly.

82. When the criminality of the government servant is adjudicated before the Court of competent jurisdiction and when the Police, Vigilance and Anti-Corruption Department has launched prosecution or proposed to launch for imposing appropriate punishment under the penal laws, the appointing/disciplinary authority/government, should be allowed to exercise their discretion to place the government servant under suspension, which is a step in aid, to complete the investigation/trial. Courts have consistently held that even if the materials are not adequate for prosecution or even after acquittal, when the appointing/disciplinary authority/government is empowered to place the government servant under suspension, the power can be exercised on proper consideration of relevant materials, in public interest.

83. Once the objective consideration of the allegations, the material on record, warrants suspension, till the completion of enquiry or trial, in public interest, it is not for this Court to examine the nature of the allegations, the evidence and to record any finding thereon, which would hamper the progress of the departmental enquiry or investigation or trial against the government servant.

84. No doubt, the exercise of discretion, should be rational, should not be arbitrary and that there is also a legal duty cast upon the appointing/disciplinary authority/Government to apply its mind before exercising such discretionary power. However, when the government servant against whom, an enquiry into grave charges or an investigation into an offence or trial is pending and such charge/charges, involves moral turpitude, then the competent authority can exercise his discretionary power under Rule 17 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and place the government servant under suspension, pending enquiry into grave charges under contemplation into charges/enquiry into formulated charges/investigation/trial.

85. In this context, it is pertinent to extract the observations of Lord Denning, as found in Wade on Administrative Law, The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means atleast this : the statutory body must be guided by relevant consideration and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted is good faith, nevertheless the decision will be set aisde.

86. The duty of the Court is restricted only to the limited extent to see that where the appointing/disciplinary authority has taken into consideration the nature of the charge, its complexity, the public interest involved in retaining the government servant, against whom, serious imputation of corruption, misappropriation, embezzlement, etc., are levelled and whether retention

of such person, would be scandalous to the department or sub-serve the discipline in the department or affect the morale of other government servants.

87. The appointing/disciplinary, authority/government is entitled to exercise the control and maintain the master and servant relationship. To suspend an employee, as an interim measure for anyone of the reasons stated supra, which are illustrative, is the absolute right of an employer and no employee can insist that he must be allowed to be retained in service and discharge his duties and enjoy the fruits or privileges attached to the post. While testing the correctness of the order of suspension, all that has to be seen by the Court is whether the power of the appointing/disciplinary authority, in controlling the employees, has been exercised reasonably, without any mala fide and that there should not be any lack of jurisdiction. Any action taken by the appointing/disciplinary authority, in public interest to maintain a clean and honest administration, cannot be interfered with lightly. Even though the government servant is put to mental agony, it is only to the limited extent of restricting him from discharging his duties and enjoy other privileges attached to the post and it is only an interim measure, till he is cleared off of the imputations levelled against him. The suspension cannot be attacked on the ground that the facts stated therein are not correct. It is well settled that the High Court cannot delve into the factual details, while adjudicating the correctness of an administrative order.

88. The order of suspension for a misconduct, involving moral turpitude, in the instant case, alleged act of corruption and the further order, refusing to revoke the order of suspension, both being discretionary and administrative in nature, should not ordinarily be interfered with by the High Court under Article 226 of the Constitution of India. Allowing a person charged with serious acts of corruption or any other misconduct, involving moral turpitude, to discharge his duties and enjoy the fruits of the post, would be against a public policy and it would not be in public interest or to maintain a clean and effective administration.

89. Cases involving serious charges of corruption and misappropriation of money, certainly involve moral turpitude, where there is implied depravity and villiness of character. As rightly observed by the Supreme Court, by allowing a government servant, facing serious charges of corruption or misappropriation or embezzlement, etc., to be retained in service, public interest would be affected. Allowing such persons to be retained in service, in my view, would give a signal to the erring government servants that if the trial is not taken up, for sometime, then the order of suspension would be revoked automatically. A person charged with a serious offence of corruption, for which, punishment may even extend to 10 years, cannot at any stretch of imagination, be inducted or retained in the department, pending disposal of the trial, as the very conduct, reputation of the person is questionable.

90. In the case on hand, powers exercised in good faith and for legitimate reasons in public interest and social interest and to effectuate the purpose for which it is conferred on the authorities, cannot be said to have been exercised arbitrarily. Courts being the custodian of law should not interfere with the orders of suspension, in the case of corruption, embezzlement or misappropriation of government money and retention of such persons would pollute and contaminate the department. The effect of retention of such persons in service, pending trial would demoralise the other

government servants, frustrate the object of Prevention of Corruption Act. Therefore, the action of the respondent, in keeping such government servant away from the sphere of his activities, no matter whether the trial is prolonged for a considerable time, cannot clothe any right to seek for retention in service. Though Courts are designated exclusively for the purpose of dealing with corruption cases, for so many reasons, sometimes not bona fide, they are delayed. No doubt, pendency of the trial for an offence under the Prevention of Corruption Act, causes agony and humiliation, but it is always open to the government servant to approach the Court, seeking for early disposal of the trial.

91. It is the responsibility of the appointing/disciplinary, authority/government to take into consideration that other employees/servants of the department are not de-moralised and restoring the services of such person, in service, would be certainly deleterious to the efficiency of others. Powers exercised by the appointing/disciplinary authority in rejecting the request, cannot be said to be arbitrary. The appointing/disciplinary authority/government has to maintain honesty, good conduct, efficiency in administration and to keep away persons, facing serious charges.

92. In the light of the principles of the Supreme Court, there is no manifest illegality in the order of suspension and the order rejecting his request for revocation. The request of the Learned Senior Counsel that the petitioner may be allowed to discharge his duties, in view of the interim order, cannot be considered for the forgoing reasons. Interim order granted in M.P.No.1 of 2009, dated 24.07.2009, is vacated. Hence, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

skm To

1. The Additional Commissioner of Police, Traffic, Chennai.

2. The Commissioner of Police, Chennai Sub Urban, St. Thomas Mount, Chennai 16