Union Of India & Anr vs Ashok Kumar Aggarwal on 22 November, 2013

Equivalent citations: AIRONLINE 2013 SC 479

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Bench: B.S. Chauhan, S.A. Bobde

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9454 OF 2013

Union of India & Anr. ..…… Appellants

Versus

Ashok Kumar Aggarwal …..…. Respondent

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred by the Union of India against the judgment and order dated 17.9.2012, passed by the High Court of Delhi at New Delhi in Writ Petition (Civil) No.5247 of 2012 affirming the judgment and order dated 1.6.2012, passed by the Central Administrative Tribunal, New Delhi (hereinafter referred to as the 'Tribunal') in OA No.495 of 2012 filed by the respondent by which and whereunder the Tribunal has quashed the suspension order passed by the appellants.

2. Facts and circumstances giving rise to this appeal are:

A. That the respondent who belongs to the Indian Revenue Service (Income Tax-1985 batch) has been put under suspension since 28.12.1999 in view of the pendency of two criminal cases against him duly investigated by the Central Bureau of Investigation (for short 'CBI') and in which he was also arrested on two occasions, namely, 23.12.1999 and 19.10.2000 in relation to the said cases. During the relevant time, the respondent was on deputation to Enforcement Directorate and was working as Deputy Director (Enforcement).

B. The CBI registered RC No.S18/E0001/99 dated 29.1.1999 against the respondent in respect of certain illegal transactions whereby the Directorate had seized a fax message (debit advice) from the premises of one Subhash Chandra Bharjatya purported to have been sent from Swiss Bank Corporation, Zurich, Switzerland, which reflected a debit of US$ 1,50,000 from the account of Royalle Foundation, Zurich, Switzerland in favour of one S.K. Kapoor, holder of account number 002-9-608080, Hong Kong & Shanghai Banking Corporation (HSBC), Head office at Hong Kong, as per the advice of the customer, i.e. Royalle Foundation. Subhash Bharjatya filed a complaint dated 4.1.1998 alleging the said fax message to be a forgery and had been planted in his premises during the course of search in order to frame him and further that he and his employee were illegally detained on the night of 1.1.1998 and were threatened and manhandled. It was in the investigation of this case that CBI took a prima facie view that respondent was part of a criminal conspiracy with co-accused Abhishek Verma to frame Subhash Chandra Bharjatya in a case under Foreign Exchange Regulation Act, 1973 (hereinafter referred to as FERA) by fabricating false evidence to implicate Subhash Bharjatya. C. Subsequently, CBI registered another case No. RC S19/E0006/99 dated 7.12.1999 in respect of disproportionate assets possessed by the respondent amounting to more than 12 crores to his known sources of income during his service period of 14 years. As the respondent was arrested on 23.12.1999, he was under deemed suspension. The suspension order was reviewed subsequently. In view of the provisions of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, (hereinafter referred to as `Rules 1965'), the suspension order was passed by the disciplinary authority to be effective till further order.

D. Sanction to prosecute the respondent had been obtained from the competent authority under the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act 1988').

E. The respondent challenged the order of his suspension before the Tribunal by filing OA No.783 of 2000 which was allowed by the Tribunal vide order dated 17.1.2003 giving the opportunity to the appellants herein to pass a fresh order as appropriate based on facts of the case.

F. The appellants re-considered the case of the suspension in pursuance of the order of the Tribunal dated 17.1.2003. However, vide order dated 25.4.2003 the appellants decided that the respondent should remain under suspension.

G. Aggrieved, the respondent challenged the said order dated 25.4.2003 before the Tribunal by filing OA No.1105 of 2003, however the same was dismissed vide order dated 9.5.2003. The record reveals that the said order of the Tribunal was challenged by filing a writ petition before the Delhi High Court. However, the said petition was subsequently withdrawn by the respondent vide order dated 11.8.2010.

H. So far as the criminal cases are concerned, the Special Judge granted pardon to co-accused Abhishek Verma. The said order was challenged by the respondent before the High Court and ultimately before this Court, but in vain.

The departmental proceedings were also initiated against the respondent based on the CBI's investigation reports and the charge memorandum was issued which was quashed by the Tribunal vide judgment and order dated 24.2.2010. Aggrieved, appellants filed special leave petition before this Court with a delay of more than two years, without approaching the High Court. The judgment of this Court dated 5.9.2013 passed in C.A.Nos. 7761-7717 of 2013, Union of India & Ors. v. B.V. Gopinath etc. etc., affirmed the view taken by the Tribunal that chargesheet is required to be approved by the disciplinary authority. The petition filed by the appellants against the respondent has not yet been decided. Review Petition filed by the appellants against the judgment and order dated 5.9.2013 is also reported to be pending.

I. The appellants had been reviewing the suspension order from time to time and thus, the respondent filed OA No.2842 of 2010 before the Tribunal for quashing of the suspension order and the same was disposed of by the Tribunal vide order dated 16.12.2011 directing the appellants to convene a meeting of the Special Review Committee (SRC) within a stipulated period to consider revocation or continuation of suspension of the respondent after taking into consideration various factors mentioned in the said order.

J. Pursuant to the said order of the Tribunal dated 16.12.2011, the SRC was constituted. The competent authority considered the recommendations of the SRC in this regard and passed an order dated 12.1.2012 to the effect that the suspension of the respondent would continue. The views of the CBI were made available subsequent to order dated 12.1.2012 and thus, the SRC again met and recommended the continuance of suspension of the respondent and on the basis of which the Competent Authority, vide order dated 3.2.2012, decided to continue the suspension of the respondent.

K. The respondent challenged the said orders dated 12.1.2012 and 3.2.2012 by filing OA No.495 of 2012 before the Tribunal and the Tribunal allowed the said OA vide order dated 1.6.2012 holding that the earlier directions given by the Tribunal on 16.12.2011 had not been complied with while passing the impugned orders dated 12.1.2012 and 3.2.2012 and thus, the continuation of suspension was not tenable. The said orders were accordingly quashed by the Tribunal. L. Aggrieved by the

order dated 1.6.2012 passed by the Tribunal, the appellants preferred Writ Petition No.5247 of 2012 before the High Court of Delhi which was dismissed vide judgment and order impugned dated 17.9.2012.

Hence, this appeal.

3. Ms. Indira Jaising, learned Additional Solicitor General appearing for the appellants has submitted that though the respondent had been under suspension for 14 years but in view of the gravity of the charges against him in the disciplinary proceedings as well as in the criminal cases, no interference was warranted by the Tribunal or the High Court. In spite of the fact that the charges were framed against the respondent and the domestic enquiry stood completed and very serious charges stood proved against the respondent, no punishment order could be passed by the disciplinary authority in view of the fact that the charge sheet itself has been quashed by the Tribunal on the ground that it had not been approved by the disciplinary authority and in respect of the same, the matter had come to this Court and as explained hereinabove, has impliedly been decided in favour of the respondent vide judgment and order dated 5.9.2013.

The respondent has himself filed 27 cases in court and made 62 representations. Almost all his representations had been considered by the competent authority fully applying its mind and passing detailed orders. The Tribunal has placed reliance on the notings in the files while deciding the case, which is not permissible in law as the said notings cannot be termed as decision of the government.

The scope of judicial review is limited in case of suspension for the reason that passing of suspension order is of an administrative nature and suspension is not a punishment. Its purpose is to only forbid the delinquent to work in the office and it is in the exclusive domain of the employer to revoke the suspension order. The Tribunal or the court cannot function as an appellate authority over the decision taken by the disciplinary authority in these regards.

In view of the provisions contained in CVC Regulations which came into force in 2004, the case of suspension of the respondent has been reviewed from time to time and the disciplinary authority thought it proper to continue the suspension order. The Tribunal and the High Court failed to appreciate that the directions given by the Tribunal in its order dated 16.12.2011, inter-alia, to consider the reply to the letter rogatory received from the competent authority in Switzerland and the report of the Law Department in case of sanction granted by the competent authority i.e. Hon'ble Finance Minister are matters to be examined by the trial court where the case is pending. The proceedings had been stayed by the court taking a prima facie view that the courts below had not passed the order in correct perspective and in that view of the matter, the appellants could not be blamed. Thus, the impugned judgment and order is liable to be set aside.

4. Shri Dhruv Mehta, learned senior counsel appearing for the respondent has opposed the appeal contending that the respondent had served the department for a period of 14 years and has faced the suspension for the same duration i.e. 14 years, and after nine year, the respondent would attain the age of superannuation. The appellants have obtained the interim order from this court restraining the trial court to proceed in a criminal case though it is not permissible in law to stay the trial as

provided in Section 19(3) of the Act 1988. The said interim order had been obtained by the appellants by suppressing the material facts. The Tribunal vide order dated 16.12.2011 had issued certain directions and in spite of the fact that the said order had attained finality as the appellants had chosen not to challenge the same before a higher forum, the appellants were bound to ensure the compliance of the same and the Tribunal and the High Court had rightly held that the said order had not been complied with and the suspension orders dated 12.1.2012 and 3.2.2012 suffered from non-application of mind. More so, the Tribunal having quashed the suspension orders, renewing the suspension order would tantamount to sitting in appeal against the order of the Tribunal. The conduct of the appellants had been contemptuous and the same disentitled them for any relief from this Court. In view of the above, no interference is called for and the appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. Representation may be considered by the competent authority if it is so provided under the statutory provisions and the court should not pass an order directing any authority to decide the representation for the reasons that many a times, unwarranted or time-barred claims are sought to be entertained before the authority. More so, once a representation has been decided, the question of making second representation on a similar issue is not allowed as it may also involve the issue of limitation etc. (Vide: Rabindra Nath Bose & Ors. v. Union of India & Ors., AIR 1970 SC 470; Employees' State Insurance Corpn. v. All India Employees' Union & Ors., (2006) 4 SCC 257; A.P.S.R.T.C. & Ors. v. G. Srinivas Reddy & Ors., AIR 2006 SC 1465; Karnataka Power Corporation Ltd. & Anr. v. K. Thangappan & Anr., AIR 2006 SC 1581; Eastern Coalfields Ltd. v. Dugal Kumar, AIR 2008 SC 3000; and Uma Shankar Awasthi v. State of U.P. & Anr., (2013) 2 SCC 435).

7. During suspension, relationship of master and servant continues between the employer and the employee. However, the employee is forbidden to perform his official duties. Thus, suspension order does not put an end to the service. Suspension means the action of debarring for the time being from a function or privilege or temporary deprivation of working in the office. 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 any stretch of imagination in strict legal sense. (Vide: O.P. Gupta v. Union of India & Ors., AIR 1987 SC 2257; and Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr., AIR 1999 SC 1416).

8. In State of Orissa v. Bimal Kumar Mohanty, AIR 1994 SC 2296, this Court observed as under:–
"..... the order of suspension would be passed taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of evidence placed before the appointing authority and on application of the mind by the disciplinary authority. Appointing authority or disciplinary authority should consider ..... 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 should be laid down in that behalf.....In other words, it is to refrain him to avail further opportunity to perpetuate the

alleged misconduct or to remove the impression among the members of service that dereliction of duty will pay fruits and the offending employee may get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the inquiry or investigation to win over the other witnesses or the delinquent having had an opportunity in office to impede the progress of the investigation or inquiry etc. It would be another thing if the action is actuated by mala fide, arbitrarily 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 continuation in office while facing departmental inquiry or a trial of a criminal charge." (Emphasis added) (See also: R.P. Kapur v. Union of India & Anr., AIR 1964 SC 787 ; and Balvantrai Ratilal Patel v. State of Maharashtra, AIR 1968 SC 800).

9. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

10. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.

11. In Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel & Ors., (2006) 8 SCC 200, this Court explained:

> "18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it

> is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision."

12. Long period of suspension does not make the order of suspension invalid. However, in State of H.P. v. B.C. Thakur, (1994) SCC (L&S) 835, this Court held that where for any reason it is not possible to proceed with the domestic enquiry the delinquent may not be kept under suspension.

13. There cannot be any doubt that the Rules 1965 are a self contained code and the order of suspension can be examined in the light of the statutory provisions to determine as to whether the suspension order was justified. Undoubtedly, the delinquent cannot be considered to be any better off after the charge sheet has been filed against him in the court on conclusion of the investigation than his position during the investigation of the case itself. (Vide: Union of India & Ors. v. Udai Narain, (1998) 5 SCC 535).

14. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in State of M.P. v. Sardul Singh, (1970) 1 SCC 108; P.V. Srinivasa Sastry v. Comptroller & Auditor General of India, (1993) 1 SCC 419; Director General, ESI & Anr. v. T. Abdul Razak, AIR 1996 SC 2292; Kusheshwar Dubey v. M/s Bharat Cooking Coal Ltd. & Ors., AIR 1988 SC 2118; Delhi Cloth General Mills vs. Kushan Bhan, AIR 1960 SC 806; U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. v. Sanjeev Rajan, (1993) Supp. (3) SCC 483; State of Rajasthan v. B.K. Meena & Ors., (1996) 6 SCC 417; Secretary to Govt., Prohibition and Excise Department v. L. Srinivasan, (1996) 3 SCC 157; and Allahabad Bank & Anr. v. Deepak Kumar Bhola, (1997) 4 SCC 1, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial can not be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record

connecting the employee with the misconduct in question.

Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as which version is true when there are claims and counter claims on factual issues. The court cannot act as if it an appellate forum de hors the powers of judicial review.

15. Rule 10 of the Rules 1965 provides for suspension and clause 6 thereof provides for review thereof by the competent authority before expiry of 90 days from the effective date of suspension. However, the extension of suspension shall not be for a period exceeding 180 days at a time. The CVC can also review the progress of investigation conducted by the CBI in a case under the Act 1988.

The Vigilance Manual issued by CVC on 12th January, 2005 specifically deals with suspension of a public servant. Clause 5.13 thereof provides that Commission can lay down the guidelines for suspension of a government servant. However, if the CBI has recommended suspension of a public servant and the competent authority does not propose to accept the said recommendation, the matter may be referred to the CVC for its advice. The CBI may be consulted if the administrative authority proposes to revoke the suspension order. Clause 6.1 read with Clause 6.3.2 thereof provide that suspension is an executive order only to prevent the delinquent employee to perform his duties during the period of suspension. However, as the suspension order constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospects of promotion and also carried a stigma, an order of suspension should not be made in a perfunctory or in a routine and casual manner but with due care and caution after taking all factors into account.

Clause 6.3.3 further provides that before passing the order of suspension the competent authority may consider whether the purpose may be served if the officer is transferred from his post.

Clauses 17.42 to 17.44 of the CBI (Crime) Manual 2005 also deal with suspension. The said clauses provide that the government servant may be put under suspension if his continuance in office would prejudice the investigation, trial or enquiry e.g. apprehension of interfering with witnesses or tampering of documents or his continuation would subvert discipline in the office where the delinquent is working or his continuation would be against the wider public interest.

The Department of Personnel and Training, Government of India also issued Circular dated 4.1.2004 regarding the suspension and review of the suspension order.

16. The instant case is required to be considered in light of the aforesaid settled legal propositions, statutory provisions, circulars etc. The Tribunal inter alia had placed reliance on notings of the file. The issue as to whether the notings on the file can be relied upon is no more res integra.

In Shanti Sports Club v. Union of India, (2009) 15 SCC 705, this Court considered the provisions of Articles 77(2), 77(3) and 166(2) of the Constitution and held that unless an order is expressed in the

name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order on behalf of the Government. The Court further held:

> "43. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review." Similarly, while dealing with the issue, this Court in Sethi Auto Service Station v. DDA, AIR 2009 SC 904 held:
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> "14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

17. In Jasbir Singh Chhabra v. State of Punjab, (2010) 4 SCC 192, this Court held:

> "35..... However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by mala fides or is influenced by extraneous considerations....."

18. Thus, in view of the above, it is evident that the notings in the files could not be relied upon by the Tribunal and Court. However, the issue of paramount importance remains as what could be the effect of judgment and order of the Tribunal dated 16.12.2011 wherein the Tribunal had directed the appellants to reconsider the whole case taking into account various issues inter-alia as what would be the effect of quashing of the chargesheet by the Tribunal against the respondent; the report/recommendation of the Law Ministry to revoke the sanction; the effect of affidavit filed by the then Finance Minister after remand of the sanction matter by the High Court to the effect that though the competent authority had accorded sanction, the entire relevant matter had not been

placed before him; the directions passed by the High Court against the officers of the CBI in the cases of Shri Vijay Aggarwal and Shri S.R. Saini; and the duration of pendency of criminal trial against the respondent and, particularly, taking note of the stage/status of the criminal proceedings, in view of the fact that the respondent is on bail since 2000 and since the investigation is completed, whether there is any possibility of tampering with the evidence.

Before we proceed further, we would like to clarify that the Tribunal did not direct the competent authority not to renew the order of suspension or to decide the case in a particular way. Rather simple directions were issued to take the aforesaid factors into consideration before the order is passed.

19. Subsequent thereto, the SRC considered the case and the competent authority passed the order of continuation of suspension order on 12.1.2012. The said order made it clear that it would not be feasible for the competent authority to pass a reasoned and speaking order as required in terms of the Office Memorandum dated 7.1.2004 for the reason that CBI reports had not been received.

20. After receiving of the report of the CBI, a fresh order was passed on 3.2.2012 wherein substantial part is verbatim to that of the earlier order dated 12.1.2012 and reiterating the report of the CBI, the authority abruptly came to the conclusion that suspension of the respondent would continue.

21. Both these orders were challenged by the respondent before the Tribunal by filing OA No. 495 of 2012 and in view of the fact that the directions given earlier on 16.12.2011 had not been complied with, in letter and spirit, the Tribunal allowed the OA by a detailed judgment running into 72 pages. Though the Tribunal took note of the fact that the charges against the respondent were grave, it held that continuance of the respondent's suspension was not tenable. Hence, the said orders were quashed and set aside with the direction to the appellants to revoke his suspension and to reinstate him in service with all consequential benefits. However, liberty was given to the appellants that if at any point of time and in future, the criminal trial proceedings commenced, the appellants could consider the possibility of keeping the officer under suspension at that point of time if the facts and circumstances so warranted.

22. The order dated 16.12.2011 was not challenged by the appellants and thus, attained finality. Therefore, the question does arise as to whether it was permissible for the appellants to pass any fresh order of suspension till the commencement of the trial before the criminal court?

23. Instead of ensuring the compliance of the aforesaid judgment and order of the Tribunal dated 16.12.2011, the matter was reconsidered by SRC, which took note of the fact that the orders dated 12.1.2012 and 3.2.2012 had been quashed and set aside, and further that criminal trial had been stayed by this Court, which recommended that suspension of the respondent be revoked and he may be posted to a non-sensitive post. However, this recommendation was subject to the approval of the Hon'ble Finance Minister. The record reveals that the said recommendation of the SRC was considered by several higher authorities and ultimately, the competent authority passed an order that the suspension order would continue till further review after six months or the outcome of the appeal to be preferred by the department, whichever was earlier.

24. It is astonishing that in spite of quashing of the suspension order and direction issued by the Tribunal to re-instate the respondent, his suspension was directed to be continued, though for a period of six months, subject to review and further subject to the outcome of the challenge of the Tribunal's order before the High Court. The High Court affirmed the judgment and order of the Tribunal dismissing the case of the appellants vide impugned judgment and order dated 17.9.2012. Even then the authorities did not consider it proper to revoke the suspension order.

25. Placing reliance upon the earlier judgments in Mulraj v. Murti Raghunathji Mahaaraj, AIR 1967 SC 1386, Surjit Singh & Ors. etc. etc. v. Harbans Singh & Ors. etc. etc., AIR 1996 SC 135; Delhi Development Authority v. Skipper Construction Company (P) Ltd. & Anr., AIR 1996 SC 2005; and Gurunath Manohar Pavaskar & Ors. v. Nagesh Siddappa Navalgund & Ors., AIR 2008 SC 901, this Court in Manohar Lal (D) by LRs. v. Ugrasen (D) by LRs. & Ors., AIR 2010 SC 2210 held that any order passed by any authority in spite of the knowledge of order of the court, is of no consequence as it remains a nullity and any subsequent action thereof would also be a nullity.

26. In Union of India & Ors. v. Dipak Mali, AIR 2010 SC 336, this court dealt with the provisions of Rules 1965 and the power of renewal and extension of the suspension order. The court held that if the initial or subsequent period of extension has expired, the suspension order comes to an end because of the expiry of the period provided under rule 10(6) of the Rules 1965. Subsequent review or extension thereof is not permissible for the reason that earlier order had become invalid after expiry of the original period of 90 days or extended period of 180 days.

27. In State of U.P. v. Neeraj Chaubey, (2010) 10 SCC 320 and State of Orissa & Anr. v. Mamata Mohanty, (2011) 3 SCC 436, this Court held that in case an order is bad in its inception, it cannot be sanctified at a subsequent stage. In Mamta Mohtanty, it was held:

> "37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (Vide Upen Chandra Gogoi v. State of Assam,AIR 1998 SC 1289, Mangal Prasad Tamoli v. Narvadeshwar Mishra, AIR 2005 SC 1964; and Ritesh Tewari v. State of U.P.,AIR 2010 SC 3823)" (Emphasis added)

28. In view of the above, the aforesaid order dated 31.7.2012 in our humble opinion is nothing but a nullity being in contravention of the final order of the Tribunal which had attained finality. More so, the issue could not have been re-agitated by virtue of the application of the doctrine of res judicata.

29. This Court in Satyadhyan Ghosal & Ors. v. Smt. Deorajin Debi & Anr., AIR 1960 SC 941 explained the scope of principle of res-judicata observing as under:

> "7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation, When a matter - whether on a question of fact or a question of law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in S. 11 of the Code of Civil Procedure; but even where S. 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct." Similar view has been re-iterated in Daryao & Ors. v. State of U.P. & Ors., AIR 1961 SC 1457; Greater Cochin Development Authority v. Leelamma Valson & Ors., AIR 2002 SC 952; and Bhanu Kumar Jain v. Archana Kumar & Anr., AIR 2005 SC 626.

30. In Hope Plantations Ltd. v. Taluk Land Board, Peermade & Anr., (1999) 5 SCC 590, this Court has explained the scope of finality of the judgment of this Court observing as under:

> "One important consideration of public policy is that the decision pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by the appellate authority and other principle that no one should be made to face the same kind of litigation twice ever because such a procedure should be contrary to consideration of fair play and justice. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it."

31. In view of above, we are of the considered opinion that it was not permissible for the appellants to consider the renewal of the suspension order or to pass a fresh order without challenging the order of the Tribunal dated 1.6.2012 and such an attitude tantamounts to contempt of court and arbitrariness as it is not permissible for the executive to scrutinize the order of the court.

32. In Dr. Amarjit Singh Ahluwalia v. The State of Punjab & Ors., AIR 1975 SC 984, this Court placing reliance upon the judgment in Vitaralli v. Seaton, 359 US 536, considered the scope of Articles 14 and 16 observing that the scope of those Articles is wide and pervasive as those Articles embodied the principle of rationality and they are intended to strike against arbitrary and discriminatory action taken by the State.

33. In Union of India v. K.M. Shankarappa, (2001) 1 SCC 582, this Court deprecated the practice of interfering by the executives without challenging the court order before the superior forum, observed as under:

> "The executive has to obey judicial orders. Thus, Section 6(1) is a travesty of the rule of law which is one of the basic structures of the Constitution. The legislature may, in certain cases, overrule or nullify a judicial or executive decision by enacting an appropriate legislation. However, without enacting an appropriate legislation, the executive or the legislature cannot set at naught a judicial order. The executive cannot sit in an appeal or review or revise a judicial order. The Appellate Tribunal consisting of experts decides matters quasi-judicially. A Secretary and/or Minister cannot sit in appeal or revision over those decisions. At the highest, the Government may apply to the Tribunal itself for a review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the Tribunal." (Emphasis added)

34. The aforesaid facts make it crystal clear that it is a clear cut case of legal malice. The aspect of the legal malice was considered by this Court in Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors., AIR 2010 SC 3745, observing:

> "25. The State is under obligation to act fairly without ill will or malice— in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts.
>
> 26. Passing an order for an unauthorised purpose constitutes malice in law."

35. The record of the case reveals that this Court has granted interim order dated 8.10.2012 staying the operation of the judgment and order dated 1.6.2012 but that would not absolve the appellants from passing an illegal, unwarranted and uncalled for order of renewal of suspension on 31.7.2012 and if that order was void, we are very much doubtful about the sanctity/validity of the orders passed on 21.1.2013 and 17.7.2013. It further creates doubt whether the appellants, who had acted such unreasonably or illegally, are entitled for any relief before this Court. The Tribunal and the High Court were right that the appellants had not followed the directions of the Tribunal issued on 16.12.2011 and the mandate of Department's O.M. dated 7.1.2004. There is no gainsaid in saying that the terms of the said O.M. were required to be observed.

36. It is a settled legal proposition that jurisdiction under Article 136 of the Constitution is basically one of conscience. The jurisdiction is plenary and residuary. Therefore, even if the matter has been admitted, there is no requirement of law that court must decide it on each and every issue. The court can revoke the leave as such jurisdiction is required to be exercised only in suitable cases and very sparingly. The law is to be tempered with equity and the court can pass any equitable order

considering the facts of a case. In such a situation, conduct of a party is the most relevant factor and in a given case, the court may even refuse to exercise its discretion under Article 136 of the Constitution for the reason that it is not necessary to exercise such jurisdiction just because it is lawful to do so. (Vide: Pritam Singh v. The State, AIR 1950 SC 169; Taherakhatoon (D) by Lrs. v. Salambin Mohammad, AIR 1999 SC 1104; and Karam Kapahi & Ors. v. M/s. Lal Chand Public Charitable Trust & Anr., AIR 2010 SC 2077).

37. A Constitution Bench of this Court while dealing with a similar issue in respect of executive instructions in Sant Ram Sharma v. State of Rajasthan & Ors., AIR 1967 SC 1910, held:

> "It is true that the Government cannot amend or supersede statutory Rules by administrative instruction, but if the Rules are silent on any particular point, the Government can fill-up the gap and supplement the rule and issue instructions not inconsistent with the Rules already framed."

38. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/ executive instructions in contravention of the statutory Rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide:

> Union of India & Ors. v. Majji Jangammayya & Ors., AIR 1977 SC 757; P.D. Aggarwal & Ors. v. State of U.P. & Ors., AIR 1987 SC 1676; Paluru Ramkrishnaiah & Ors. v. Union of India & Anr., AIR 1990 SC 166; C. Rangaswamaiah & Ors. v. Karnataka Lokayukta & Ors., AIR 1998 SC 2496; and JAC of Airlines Pilots Association of India & Ors. v. The Director General of Civil Aviation & Ors., AIR 2011 SC 2220).

39. Similarly, a Constitution Bench of this Court, in Naga People's Movement of Human Rights v. Union of India., AIR 1998 SC 431, held that the executive instructions have binding force provided the same have been issued to fill up the gap between the statutory provisions and are not inconsistent with the said provisions.

40. In Nagaraj Shivarao Karjagi v. Syndicate Bank, Head Office, Manipal & Anr., AIR 1991 SC 1507, this Court has explained the scope of circulars issued by the Ministry observing that it is binding on the officers of the department particularly the recommendations made by CVC.

41. In State of U.P. & Ors. v. Maharaja Dharmander Prasad Singh & Ors., AIR 1989 SC 997, this Court held that the order must be passed by the authority after due application of mind uninfluenced by and without surrendering to the dictates of an extraneous body or an authority.

42. Considering the case in totality, we are of the view that the appellants have acted in contravention of the final order passed by the Tribunal dated 1.6.2012 and therefore, there was no occasion for the appellants for passing the order dated 31.7.2012 or any subsequent order. The orders passed by the appellants had been in contravention of not only of the order of the court but also to the office memorandum and statutory rules.

In view thereof, we do not find any force in this appeal. The appeal lacks merit and is accordingly dismissed. There will be no order as to costs.

.....J.
(DR. B.S. CHAUHAN)

.....J.
(S.A. BOBDE)

New Delhi,
November 22, 2013