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**(1960) 12 AP CK 0007**  
**In the Andhra Pradesh High Court**  
**Case No : Appeal No. 372 of 1957**

Anchuru Veerapa Naidu

APPELLANT

Vs

Gurijala Venkaiah Chowdari

RESPONDENT

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**Date of Decision :** 23-12-1960

**Acts Referred:**

Registration Act, 1908 — Section 17, 49, 77

**Citation :** AIR 1961 AP 534

**Hon'ble Judges :** S. Qamar Hasan, J;Kumarayya, J

**Bench :** Division Bench

**Advocate :** M. Krishna Rao, for the Appellant; B.V. Subrahmanyam and V.V. Krishnamurthy, for the Respondent

**Final Decision :** Dismissed

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## Judgement

This Judgment has been overruled by : Kalavakurti Venkata Subbaiah Vs. Bala Gurappagari Guruvi Reddy, AIR 1999 SC 2958 : (1999) 5 JT 389 : (1999) 4 SCALE 466 : (1999) 7 SCC 114 : (1999) 1 SCR 75 Supp : (1999) AIRSCW 2872 : (1999) 6 Supreme 419

P.S. Narayana, J.—When the matter came up for admission and hearing at the request of the Counsel on record, the matter is taken up for final hearing where the Counsel made elaborate submissions and in view of the same, the Writ Petition is being disposed of finally at the stage of admission.

2. Sri P. Chandramouli, Assistant Commissioner of Police (now under suspension), filed the present Writ Petition questioning the Order made in O.A.No. 589/ 05 dated 24-2-2005 on the file of A.P. Administrative Tribunal, in short referred to as "Tribunal" for the purpose of convenience. The Order impugned in the Writ Petition is as hereunder:

"In this O.A. the applicant is challenging the suspension order.

As per Rule 33 of APCS (CCA) Rules, the applicant has a right of appeal.

Therefore, this OA is disposed of, with a direction to the applicant to prefer an appeal before the appellate authority within two weeks from to-day and on such appeal being filed, the respondents shall dispose of the same within six weeks thereafter."

In the aforesaid O.A. the writ petitioner/ applicant questioned the proceedings C.No. 36/02/2004 dated 1-2-2005 made by the 2nd respondent suspending the petitioner from service and the same reads as specified infra:

PROCEEDINGS OF THE DIRECTOR GENERAL AND INSPECTOR GENERAL OF POLICE, ANDHRA PRADESH, HYDERABAD

PRESENT: SRI SWARANJIT SEN, IPS

C. No. 36/2/2005 Dated: 1-2-2005 Sub: Police Services - Police Dept. -Sri P. Chandra Mouli, formerly ACP Banjara Hills, Hyderabad -Suspension from service - Orders issued.

ORDER

Whereas it has come to the notice of the undersigned alleging that Sri P. Chandra Mouli, formerly ACP Banjara Hills, Hyderabad has exhibited grave misconduct, incorrigible, indifferent, indisciplined and irresponsible towards his legitimate duties and also he committed serious lapses in the matters relating to (1) Cr.No. 168/2004 U/s. 307 IPC, 25(1), 27 Arms Act of Jubilee Hills Police Station; (2) Case Cr. No. 704/04 Under Sections 406, 420 IPC of Bajara Hills Police Station; (3) Case in Cr.No. 42/2005 Under Sections 427, 447 IPC of Banjara Hills P. S. and (4) Cr.No. 17/2005 Under Sections 147, 148, 427, 323 IPC of Jubilee Hills Police Station and his conduct in matters relating to civil disputes, property disputes or handling of certain issues had been questionable on more than one occasion. He has also failed to supervise several important Criminal cases in his Sub-Division.

And whereas it is considered that his continuance in post will prejudice the disciplinary proceedings.

And whereas the undersigned after careful consideration of the available material and having due regard to the circumstances of the case, is satisfied that it is necessary to place Sri P. Chandra Mouli, formerly, ACP Banjara Hills, Hyderabad under suspension in the public interest.

Now, therefore, in exercise of the powers conferred by under Clause (a) of Sub-rule (1) of Rule 8 of A.P. Civil Services (CC&A) Rules, 1991 the undersigned hereby places the said Sri P. Chandra Mouli, formerly ACP Banjara Hills, Hyderabad, under suspension from the date of communication of his Order and he shall continue to be under suspension in public interest until the conclusion of the disciplinary proceedings.

It is further ordered that during the period of this Order remains in force, the headquarters of Sri P. Chandra Mouli, formerly ACP Banjara Hills, Hyderabad shall

be at Hyderabad and the said Sri P. Chandra Mouli, formerly ACP Banjara Hills, Hyderabad, shall not leave the headquarters without obtaining the previous permission of the undersigned.

It is further ordered that during the period of suspension Sri P. Chandra Mouli, formerly ACP Banjara Hills, Hyderabad shall be paid subsistence allowance equivalent to the leave salary on half pay leave. The D.A. and other compensatory allowances shall be paid along with subsistence allowance. The quantum of subsistence allowance will be reviewed and revised in terms of F.R. 53 (1) and after 3 months. Pending review he shall continue to draw the subsistence allowance now sanctioned.

Sd/- Director General and Inspector General of Police

The 3rd respondent herein who is impleaded by name as 4th respondent, prior thereto, made and communicated the Order in No. L-003/11/5/2005 dated 17-1-2005, which reads as hereunder:

GOVERNMENT OF ANDHRA PRADESH (Police Department)

Office of the Commissioner of Police, Hyderabad City.

No. L&O/03/115/2005 Dated: 17-1 -2005 MEMO

It is found that you have outlived your utility and your services are no longer required in the City Police as it is felt that your further continuation in the City Police is detrimental to public interest apart from creating bad image to the police. Hence, you are hereby directed to hand over charge to Sri M. Muralidhar Rao, A.C.P. Traffic and proceed to report in Chief Office with immediate effect.

Sri K. Muralidhar Rao, ACP, Traffic, Central Zone is hereby directed to immediately take over as A.C.P. Banjara Hills relieving Sri Chandra Mouli.

Report compliance to this memo. Sd/- Commissioner of Police, Hyderabad City.

3. Submissions made by Sri Gangaiah Naidu:

Sri Gangaiah Naidu, the learned Senior Counsel representing the writ petitioner would maintain that in the peculiar facts and circumstances, the Tribunal definitely erred in driving the party to invoke appellate remedy instead of considering the grounds which had been urged by the writ petitioner. The learned Counsel also would contend that the Order of suspension which had been impugned in the O.A. is not in conformity with the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991, in short referred to as "Rules". The learned Counsel had drawn the attention of this Court to Rule 8 in general and Rule 8(1 )(a) of the Rules in particular and would submit that on a prima facie reading of the impugned Order in the O.A. it is clear that the same was made by recording perverse reasons and definitely though the party who made the Order is competent to do so, had not applied his mind but had mechanically made the said Order at the instance of the 3rd respondent who was impleaded

eo nomine as 4th respondent. The learned Counsel also made elaborate submissions relating to the specific plea of mala fides taken in this regard and also the way in which the Order had been made. The learned Counsel also in elaboration had explained the word or expression "ordinarily" employed in Section 20 of the Administrative Tribunals Act, 1985 in short referred to as "Act" for the purpose of convenience. The learned Counsel also had referred to A.P. Police Manual in general and Order No. 175-1 in particular. The learned Counsel also placed reliance on Subramonian v. State of Kerala and Ors. 1973(1) SLR 521 (Kerala), State of Kerala v. K.C. George 1984 (2) SLR 137 (Kerala) and In Re Dhiraj Kumar Roy Chowdhury 1989 (4) SLR 720 (Calcutta).

#### 4. Submissions made by the learned Advocate-General:

The learned Advocate General initially raised a preliminary objection relating to the very maintainability of the O.A. on the ground that an effective alternative remedy is available under Rule 33 of the Rules and hence in the light of the language employed in Section 20 of the Act, the O.A. itself is not maintainable since the same had been filed without exhausting the other remedies available under Rules and hence the Tribunal is well justified in refusing to entertain the same and driving the petitioner to invoke the remedy of statutory appeal provided under Rule 33 of the Rules. The learned Advocate General also had explained the scope and ambit of Sections 20 and 21 of the Act and further stressed on the limitations imposed on this Court while exercising powers of judicial review vis-a-vis the orders made by the Tribunal under Article 226 of the Constitution of India. Strong reliance was placed on S.S. Rathore Vs. State of Madhya Pradesh, . While elaborating his submissions the learned Advocate General also would contend that except stating that the appellate authority/ Government also had been influenced and hence no purpose would be served in preferring an appeal, no other substantial ground had been raised in this regard and this is the ground raised in a routine. Elaborate submissions were made on the ground of mala fides or malice. It was submitted that on the mere words which had been used in the Order impugned in the O.A. per se this Court may not come to the conclusion that the reasoning is perverse. Comment had been made to the effect that no mala fides as such had been attributed to the 2nd respondent and the 2nd respondent had not been impleaded eo nomine as a party. The 3rd respondent is not the competent authority who made the impugned Order and hence by mere impleading the 3rd respondent eo nomine as 4th respondent, would not alter the situation in any way. At any rate, it was contended that there is absolutely no proof of mala fides. Reliance was placed on M. Narasimhaiah Vs. Deputy Commissioner for Transport, Bangalore Division, Infantry Road, Bangalore and Another, , State of Punjab Vs. V.K. Khanna and Others, , Parbodh Sagar Vs. Punjab State Electricity Board and Others, and State of Punjab and Others Vs. Chaman Lal Goyal, in this regard.

5. Heard the learned Senior Counsel Sri Gangaiah Naidu and the learned Advocate General and also perused the material available on record.

6. Maintainability of the Writ Petition or O.A. in view of the alternative remedy of appeal available under the Rules:

Both the Counsel made submissions in elaboration. The Senior Counsel representing the writ petitioner is contending that in the peculiar facts and circumstances no purpose would be served in driving the writ petitioner to the remedy of appeal under Rule 33 of the Rules and on the contrary on such mere assertion the writ petitioner cannot be permitted to invoke the jurisdiction of the Tribunal straightaway by the learned Advocate General.

7. Act 13 of 1985 is an Act to provide for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of Article 323-A of the Constitution and for matters connected therewith or incidental thereto. Section 14 of the Act deals with Jurisdiction, powers and authority of the Central Administrative Tribunal. Section 15 of the Act deals with Jurisdiction, powers and authority of State Administrative Tribunals. Section 19 of the Act deals with Applications to Tribunals. Section 20 of the Act is dealing with Applications not to be admitted unless other remedies exhausted, reads as hereunder:

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of Sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final Order has been made by Government or other authority or officer or other person competent to pass such Order under such Rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final Order has been made by the Government or other authority or officer or other person competent to pass such Order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of Sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

Submissions at length were made on the strength of the language employed in Sections 20 and 21 of the Act. It is no doubt true that Sub-section (1) states ".....the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances." The term "ordinarily" in the context means generally, but not always in all cases. The provision does not bar the ultimate jurisdiction of the Administrative Tribunal but it only requires the party to exhaust the other remedies available. The aim of introducing this provision is to provide for an additional forum and certain opportunities to the redressal of grievances and to prevent short-circuiting of normal Departmental procedures specified under the service rules. In *Kailash Chandra Vs. Union of India (UOI)*, while dealing with the interpretation of the words "should ordinarily be retained" in Rule 2046(2)(a) of Railway Establishment Code the Apex Court held that the intention is made clear and beyond by the use of the word "ordinarily" and ordinarily means in the large majority of cases, but not invariably. In the decision referred (4) supra, it was held at paras 16, 19 and 20 as hereunder:

"The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of Section 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for Government servants of the Centre and several States have already set up such tribunals under the Act for the employees of the respective States. The law is soon going to get crystallized on the line laid down u/s 20 of the Administrative Tribunals Act.

.....

.....

The question of consideration is whether it should be disposal of one appeal or the entire hierarchy of reliefs as may have been provided. Statutory guidance is available from the provisions of Sub-sections (2) and (3) of Section 20 of the Administrative Tribunals Act. There, it has been laid down:

"20.(2) For the purposes of Sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) If a final Order has been made by the Government or other authority or officer or other person competent to pass such Order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final Order has been made by the Government or other authority or

officer or other person competent to pass such Order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of Sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

We are of the view that the cause of action shall be taken to arise not from the date of the original adverse Order but on the date when the Order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such Order is made, though the remedy has been availed of, a six months" period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

This is a case where the Apex Court was considering the applicability of Article 113 of the Limitation Act, 1963 and also the date of first accrual of cause of action in relation to service disputes and Article 58 of the Limitation Act, 1963 and in the said context the doctrine of merger and applicability thereof to decisions of Department Tribunals had been discussed. The matter came up by way of Special Appeal as against a Judgment made in a Second Appeal. On a careful scrutiny of the facts, the said decision is distinguishable. While appreciating a precedent, the factual aspects and also the context in which the decision was rendered may also have to be taken into consideration. It is no doubt true that the Tribunal is having discretion, but however this discretion may have to be exercised judiciously and reasonably. In *Punjab National Bank Ltd. v. Sri Ram Kunwar* AIR 1957 SC 276 while dealing with the aspect of exercising discretion vis-a-vis Industrial Tribunal it was held that the discretion is a judicial discretion and must be exercised according to the rules of reason and justice and not by chance or caprice or private opinion or some fanciful idea of benevolence or sympathy and it is a negation of justice and reason to direct one party to pay in advance the costs of the other party irrespective of the final result of the proceeding. In *V. Vellaswamy Vs. Inspector General of Police, Tamil Nadu, Madras and Another*, the Apex Court while dealing with "alternative remedy" held that existence of a right of review is no bar to entertain the Writ Petition under Article 226 of the Constitution of India and hence the High Court is not justified in dismissing the Writ Petition solely on the ground that a review petition under Rule 15 of T. N. Police Subordinate Service (Discipline and Appeal) Rules, 1955 was open to the petitioner.

8. The existence of alternative remedy and exercising of power of judicial review under Articles 226 and 32 of the Constitution of India and the principles relating thereto are well settled. It is needless to say that in service matters the Tribunal is competent even to go into the validity of the provisions and the rules. Exercise of jurisdiction in this regard is just akin to Constitutional Courts exercising powers under Article 226 of the Constitution of India though this power of judicial review under Article 226 of the Constitution of India had been well retained on the ground that it is basic structure of the Constitution of India by virtue of the ratio laid down in *Chandra Kumar v. Union of India* 1997 (3) Supreme 147. In the light of the peculiar facts and circumstances, especially when several details had been narrated under what circumstances the Order which had been impugned in the O.A. had been made, the judicial discretion on the part of the Tribunal would require examining the matter on merits instead of driving the writ petitioner to avail the statutory appeal provided under Rule 33 of the Rule. Hence, the bald proposition that under no circumstances whatever may be the reason explained, the O.A. cannot be entertained unless other remedies available under the service rules had been completely exhausted, may not be an acceptable proposition. It is suffice to state that this power is discretionary to be exercised in a given set of facts and circumstances.

#### 9. Facts in Brief:

The writ petitioner entered the Police Department in the year 1976 as a Sub-Inspector of Police and was promoted as Inspector of Police and Deputy Superintendent of Police during the years 1983 and 1997 respectively and got accelerated promotions twice for his meritorious and outstanding performance and was given awards and rewards also. While working as Assistant Commissioner of Police/Deputy Superintendent of Police, Banjara Hills, Hyderabad from 1-1-2004, to his surprise 3rd respondent issued memo No. L&O/03/115/2005 dated 17-1-2005 directing him to hand over charge to one Sri Muralidhar Rao, A.C.P. alleging that the writ petitioner outlived his utility and his continuation in the City Police is detrimental to the public interest and creating bad image to the police. The specific stand taken by the writ petitioner both in the O.A. and also in the present Writ Petition is that the 3rd respondent exhibited his anguish in the Order itself to wreak vengeance against him due to the differences which they had while they were working at Warangal during the year 1991 and at that time the writ petitioner was Inspector of Police and the 3rd respondent was D.I.G., Warangal and during that time many police constables were killed by extremists, but as D.I.G. he did not make any arrangement even to get back the dead bodies of the deceased police personnel. This action infuriated the ill-feeling among the police personnel and the 3rd respondent presumed that the writ petitioner was responsible for the ill-feelings and hence he developed grudge against the writ petitioner and was waiting for an opportunity to wreak vengeance against him. The memo dated 17-1-2005 was no doubt challenged by filing O.A.No. 413/2005. It is further the specific stand taken by the writ petitioner that the 2nd respondent, at the instance of the 3rd

respondent, who was impleaded eo nomine as 4th respondent, issued proceedings C.No. 36/02/2005 suspending the writ petitioner from service and the same was issued with a mala fide intention and due to personal grudge of the 4th respondent. It is also specifically stated that the Order of suspension was issued at the instance of the Government, appellate authority, in view of the pressure brought by the 4th respondent. The writ petitioner is neither the Investigating Officer nor connected directly with any of the cases mentioned in the Order of suspension. It was further stated that Cr.No. 168/2004 is the known case of the film actor Balakrishna. It is stated that after obtaining the draft charge-sheet it was directly supervised by the then Commissioner Sri R. P. Singh and the other superior officers regularly and the charge-sheet was filed by the Inspector one Y. Vijaya Kumar. The petitioner like other Officers only supervised the investigation in general in the remaining three cases cited also. The writ petitioner had raised several grounds reiterating the same stand taken in the O.A. to the effect that the reasons specified even in the Order of suspension would reflect the mala fides and apart from this aspect of the matter, there is total non-application of mind and the reasons have no nexus to the alleged impugned action and the other grounds in detail which had been raised and had referred to Rule 8 of the Rules and also Order No. 174-1 and Order No. 175-2 of the A.P. Police Manual.

10. It is pertinent to note that no counter-affidavit as such had been filed by the 4th respondent who was impleaded eo nomine as a party. The concerned Officer holding the office of the 3rd respondent at present denied the allegations. The 2nd respondent no doubt filed a counter affidavit in detail where all the allegations had been specifically denied. Specific stand was taken that on sufficient material available, the action was taken in public interest and other disciplinary proceedings would follow. This action was initiated against the writ petitioner basing on the report of the D.C.P. West Zone, Hyderabad, the immediate higher authority over the writ petitioner while he was Assistant Commissioner of Police, Banjara Hills Division.

11. It may be appropriate to have a look at certain portions of the counter-affidavit filed by the 2nd respondent. In para-6 of the counter-affidavit filed by the 2nd respondent it was stated:

"That the Deputy Commissioner of Police, West Zone submitted a report dt. 24-1-2005 to the 3rd respondent through Additional Commissioner of Police, Coordination mentioning about various allegations in which the petitioner was involved. The 3rd respondent forwarded the said report to the 2nd respondent for further action. The 2nd respondent taking into account the various allegations that are brought to his notice against the petitioner, in his discretion though it fit to place the petitioner under suspension in public interest by exercising the powers conferred upon him under Clause (a) of Sub-rule (1) of Rule 8 of A.P. Civil Services (CC&A) Rules, 1991 vide proceedings dt. 1-2-2005. The said suspension was ordered by the 2nd respondent in view of the contemplated

disciplinary action against the petitioner. The petitioner challenged these proceedings also in O.A.No. 589/2005 before the Hon"ble Tribunal. It is curious to note that the 3rd respondent was arrayed in his personal capacity as 4th respondent in the O.A. though the impugned orders were passed by the 2nd respondent. At any time the Hon"ble Tribunal, having regard to the fact that there is a provision available for the petitioner to avail statutory appeal under Rule 33 of A.P. Civil Services (CC&A) Rules, 1991, disposed of the O.A. on 24-2-2005 directing the petitioner herein to prefer an appeal before the Appellate Authority within 2 weeks from the date of the Order and further it was directed that the same be disposed of within 6 weeks thereafter. The said orders of the Hon"ble Tribunal are challenged in the present Writ Petition by the Petitioner."

Likewise, at para 9 of the counter-affidavit, it was specifically stated:

"That it is settled law that in the matter of suspension, the Tribunals/Courts would be slow in interfering and the scope of judicial review is very limited. As malice is one of the grounds to attack suspension the writ petitioner has chosen to bring that aspect into the present matter though factually the same is not correct. It is necessary to note that the impugned orders of suspension have been passed by the 2nd respondent and he is not made as a party by name and only to bring the concept of malice the petitioner impleaded the 3rd respondent and also arrayed him as 4th respondent by name. In so far as suspension Order dt. 1-2-2005 is concerned, the same having been passed by the 2nd respondent there is absolutely no necessity to implead the 3rd respondent and it is further absolutely unnecessary to make wild allegations against the 4th respondent. It is curious to note the orders that have been issued by the 3rd respondent against the petitioner i.e., proceedings dated 17-1-2005 have been challenged before the Hon"ble Tribunal in O.A.No. 413/2005 but he was not arrayed by name in the said O.A. but has been arrayed by name in this Proceedings before the Hon"ble Tribunal and Hon"ble High Court only to develop the case under the guise of malice."

In para-12 of the counter-affidavit it was stated:

".....It is submitted that, the Dy. Commissioner of Police, West Zone, reported the serious lapses committed by the petitioner, (who was then working as Asst. Commissioner of Police, Banjara Hills Division) and requested to take stringent disciplinary action against the petitioner, in the public interest, as the actions of the petitioner, such as involving in civil disputes, property disputes highly objectionable and against the rules and detrimental to the maintenance of public order. The Commissioner of Police, Hyderabad reviewed the issue with other Police officers working in Hyderabad City. The Banjara Hills Sub-Division held by the petitioner is inhabited by the elite citizens of Hyderabad City and most of them are top level bureaucrats, many of the Council of Ministers, politicians and businessmen. The policing in that part of the city requires to be done with utmost patience and care without giving room to any adverse criticism. It has

come to the notice of the Dy. Commissioner of Police, West Zone, that the petitioner miserably failed to provide leadership to the officers and men working under his jurisdiction and his conduct in the matter relating to settlement of civil disputes, property disputes etc., have been questionable on many a occasion, the petitioner also failed to supervise the investigation of several criminal cases of division. It is a figment of imagination on the part of the petitioner, and attributed irrelevant matters to the present issue in Order to cover up his lapses and to conceal and camouflage his misconduct and irresponsible acts in day-to-day policing in Banjara Hills Division. The action taken by me in issuing impugned orders is based on the material available and with independent and open mind. I was neither influenced by the 3rd respondent nor by any other officer and it is highly improbable contention as the question of 3rd respondent influencing me does not arise as he is subordinate to me. The contention with regard to animosity of the 3rd respondent against him has nothing to do with the present suspension orders issued by me."

It was further stated in para -13 that:

".....it is submitted that, the petitioner while working as Asst. Commissioner of Police, Banjara Hills Division, has exhibited grave misconduct, incorrigible, indifferent, indisciplined and irresponsible behaviour towards his legitimate duties and also committed serious lapses in the matters pertinent to the following criminal cases:

(1) Cr.No. 168/2004 u/s 307 IPC, 25(1), 27 of Indian Arms Act 1955 of Jubilee Hills PS.

(2) Cr.No. 704/04 u/s 406, 420 IPC of Banjara Hills PS.

(3) Cr.No. 42/2005 u/s 427, 447 IPC of Banjara Hills PS.

(4) Cr.No.. 17/2005 u/s 147, 148, 427, 323 IPC of Jubilee Hills PS.

The petitioner's conduct in matters relating to civil disputes, property disputes and handling of certain issues of policing had been questionable on many a occasion. It was contemplated to initiate disciplinary proceedings against the petitioner in the right earnest and it was considered that his continuance in service will prejudice the disciplinary proceedings. Accordingly the 2nd respondent, after careful consideration of available material and having due regard to the circumstances of the whole issue, and in exercise of powers conferred on him by Clause (a) of Sub-rule (1) of Rules 8 r/w. Rule 13 SI.No. 17(B) of the table of the A.P. Civil Services (CC&A) Rules, 1991, has placed the petitioner under suspension in public interest till disciplinary proceedings are completed. It is incorrect on the part of the petitioner to attribute mala fide intention and personal grudge to the 4th respondent and the same on the part of petitioner is malicious and baseless."

Likewise, at para-25 of the counter-affidavit it was specifically pleaded:

".....it is stated that it is absolutely false to state that the suspension orders were served on the petitioner's son on 2-2-2005 and as a matter of fact the orders were served on the petitioner on 2-2-2005 and the concerned official i.e., Inspector of Police, Banjara Hills Police Station, Hyderabad who has served the copy upon the petitioner has specifically mentioned that he refused to put the date though he has received and signed on the duplicate copy. The petitioner was reluctant to receive the suspension Order and he went to the extent of giving a false statement before this Hon'ble Court. It is equally incorrect to contend that the 3rd respondent was involved and as he was inimical against the petitioner he has gone to this extent. It is once again reiterated that the 3rd respondent has nothing to do with the suspension Order and there is absolutely no necessity for the petitioner to bring the 3rd respondent into picture and distort the facts. No Press meet was conducted by the 3rd respondent and the question of 3rd respondent recommending for his suspension does not arise and at any rate the 2nd respondent need not oblige for the recommendations of the 3rd respondent being superior in rank and also being disciplinary authority the 2nd respondent has passed orders keeping in view the material on record and with an independent mind and as there are no allegations of mala fides against the 2nd respondent the Writ Petition deserves to be dismissed on that ground alone."

It was also pleaded in para-27 that:

".....It is stated that the petitioner is confused and/or is trying to confuse this Hon'ble Court by stating that he was appointed as Deputy Superintendent of Police under Rule 11 (25)(1) of A.P. Civil Services (CC&A) Rules, 1991. The question of Deputy Superintendent of Police being appointed under A.P. Civil Services (CC&A) Rules, 1991 is a misconceived notion. As a matter of fact G.O.Ms. No. 424, dated 30-11-1996 does not refer to that. Rule 11 talks of disciplinary authorities in State services and under Rule 11 (25)(1) of A.P. Civil Services (CC&A) Rules, 1991, no doubt it is the Deputy Inspector General of Police who is competent to impose minor punishment under Rule 9 on Deputy Superintendents of Police. Presently no punishment is imposed upon him and it only a suspension contemplating disciplinary proceedings under Rule 8(1 )(a) and the contention of the petitioner that the suspension is under Clause (5) of Rule 9 and therefore the 2nd respondent cannot pass orders of suspension and that he is not authorized to do so is a very farfetched argument/contention. First of all Rule 25 refers to Deputy Inspector General of Police whereas the 2nd respondent is the Director General of Police. Secondly Rule 9 deals with punishments and the suspension under Rule 9(5) is a different kind of suspension under minor punishments but not suspension under Rule 8(1 )(a). Further as the 2nd respondent being the Head of the Department is Competent Authority to suspend the petitioner, which is clear from Rule 13 of A.P. Civil Services (CC&A) Rules, 1991. The petitioner comes under State services. Rule 13 deals with authorities competent to suspend members of State services. It is specifically mentioned that second level Gazetted Post Officers can be suspended

by the Heads of the Department concerned. Deputy Superintendent of Police is a second level Gazetted Post and therefore the 2nd respondent has the jurisdiction and authority to suspend the petitioner. In view of the matter the whole contention of the petitioner in this regard is misconceived and deserves to be rejected."

The other allegations also had been specifically denied in the counter-affidavit and stand was taken that the reasons are not vague or baseless, but based on material.

12. Relevant Statutory provisions: Rule 8 of the Rules referred to supra which had been framed in exercise of powers conferred by the proviso of Article 309 of the Constitution of India dealing with Suspension reads as hereunder:

(1) A member of a Service may be placed under suspension from service-

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) when in the opinion of the authority competent to place the Government servant under suspension, he has engaged himself in activities prejudicial to the interest of the security of the State, or

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

(d) A member of a service may be placed under suspension from service even if the offence from which he was charged does not have bearing on the discharge of his official duties.

(2) A Government servant shall be deemed to have been placed under suspension by an Order of the authority competent to place him under suspension-

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise for a period exceeding forty eight hours,

(b) with effect from the date of his conviction if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation: The period of forty-eight hours referred to in Clause (b) of this Sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(c) the Order of suspension cease to be operative as soon as the criminal proceedings, on the basis of which the Government servant was arrested and released on bail; are terminated.

(3) Where a penalty of dismissal, removal of compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on revision or 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 authority competent to impose the penalty, 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 authority competent to impose the suspension 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 has passed an Order purely on technical grounds without going into the merits of the case.

(5)(a) An Order of suspension made or deemed to have been made under this Rule shall continue to remain in force until it is modified or revoked by the authority which made or is deemed to have made the Order or by an authority to which that authority is subordinate.

(b) Where a Government servant is suspended or is deemed to have been suspended, whether in connection with any disciplinary proceeding or otherwise, and any other disciplinary proceeding is commenced against him during the continuance of that suspension, 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.

(c) An Order of suspension made or deemed to have been made under this Rule may, at any time, be modified or revoked by the authority which made or is deemed to have made the Order or by any authority to which that authority is subordinate."

Strong reliance was placed on Rule 8(1 )(a) which specifies:

"a member of a service either placed under suspension from service where a disciplinary proceeding against him is contemplated or is pending....."

Order No. 174-1 of A.P. Police Manual dealing with suspension pending enquiry, reads as hereunder:

Suspension should be resorted only when it is necessary in public interest or while investigation into grave charges against the officer. Under the CC & A Rules a member of service may be placed under suspension.

A. Where a disciplinary proceeding against him is contemplated or is pending (Form-23), or

B. Where in the opinion of the authority competent to suspend, has engaged himself in activities prejudicial to the interest of the security of the State (Form-24), or

C. Where a case against him for any offence is under investigation, enquiry or trial (Form-25).

Likewise, Order No. 175-1 of the said A.P. Police Manual dealing with Competent Authority to suspend specifies as hereunder:

As per item 17 in Rule 13 of APCS (CC & A) Rules, 1991, members of the State services holding initial gazetted posts are to be suspended by the heads of departments concerned but as per Rule 15 of same rules, the appointing authority or the superior to such authority may also place under suspension any member of service under Rule 8 of APCS (CC & A) Rules. Therefore, the orders of the head of the department shall be obtained before suspending any initial gazetted officer to satisfy the Rule position."

It is no doubt that G.O.Ms. No. 201, Home, Police Department, dated 8-9-2001 specifies that the Manual does not supersede any statutory Service Rules, Regulations and other orders issued by the Government from time to time and if there is any contradiction or conflict, the latter will prevail. In the light of the same, it is needless to say that Rule 8 alone may have to prevail over the aforesaid provisions of the A.P. Police Manual referred to supra. In State of Assam and Another, etc. Vs. Basanta Kumar Das, etc. etc., it was held that the memorandum raising the age of retirement from 55 to 58 years being a mere executive instruction and not being a Rule under Article 309 of the Constitution of India does not confer a legal right on persons covered by it and therefore no legal action can be founded on it.

13. Mala fide action: This is yet another ground of attack on which rival submissions in elaboration had been made by both the Counsel representing the respective parties. Express or implied, direct or indirect mala fides, otherwise known as malice in fact and malice in law, no doubt may have to be proved by the person asserting such a ground. The particulars of the allegations in relation thereto had been made in the O.A. and also in the present Writ Petition and no doubt the same had been specifically denied. It is pertinent to note at this juncture itself that the Order which had been impugned in the O.A. was preceded by an Order of transfer said to be an Order of surrender made by the 3rd respondent. It is no doubt difficult to establish the ground of mala fides. Submissions at length were made that the impugned Order in the O.A. was made

by the 2nd respondent and not by the 3rd respondent and the 2nd respondent was not made party eo nomine but the 3rd respondent was made a party eo nomine as 4th respondent, but it is pertinent to note that the specific stand taken by the writ petitioner is that the 3rd respondent influenced the decision making process by virtue of which the 2nd respondent made the suspension order. The report of the 5th respondent surprisingly had not been referred to in the Order of suspension made by the 2nd respondent. Doctrine of mala fides having impact on the decision making process cannot be totally ignored by Courts in the realm of administrative law. Every aspect, if clear, though not direct, may have to be taken note of, lest it would result in unjust decisions vitiated by technicalities. Scrutiny in this sphere to be more careful than in cases of direct mala fides. If direct mala fides alleged if any are very remote and having a wider gap not having any nexus, the same should not be considered. In *State of Bihar and Another Vs. P.P. Sharma, IAS and Another*, it was held:

"Mala fide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive; and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power."

In *E.P. Royappa Vs. State of Tamil Nadu and Another*, it was observed at para 92:

"We must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high Order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators were often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high

responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up - these considerations are wholly irrelevant in judicial approach - but because otherwise, functioning effectively would become difficult in a democracy....."

On the aspect of non-impleading of the 2nd respondent eo nomine as a party, strong reliance was placed on the decision referred (8) supra, wherein the Apex Court observed at para 8 as hereunder:

"Now coming to the grounds given by the High Court, it may be pointed out at the very outset that the High Court was factually in error in holding - or in proceeding on the assumption, as the case may be - that the report of the Sub-Divisional Magistrate had exonerated the respondent of any responsibility or culpability. The report, as stated above, neither exonerates the respondent nor does it hold him responsible or guilty. It looks probable that the High Court was misled into believing that the said report has exonerated the respondent. Not only that. There is the earlier report of the Inspector General of Prisons, which was submitted within one week of the incident. It holds the respondent responsible for the said incident, no doubt, along with other prison officials. Indeed, the Inspector General of Prisons had recommended the suspension of the respondent and a few other officials. In this state of facts, it may not be correct to assume that the Government had dropped the idea of proceeding against the respondent and that it changed its mind later. It is one thing to say that the Government was guilty of inaction and an altogether different thing to say that it had dropped the matter in view of the Sub-Divisional Magistrate's report - but then revised its opinion later for reasons which are suggested to be not fair. Now coming to the charge of mala fides also, it must be stated that the said charge was made in a vague manner in the writ petition. It was not specified which officer was ill-disposed towards the respondent and how and in what manner did he manage to see that the charges are served upon the respondent when the respondent's case was to come up for consideration for promotion. The appellants say that the respondent's case was not to come up for consideration for promotion in the year 1992 at all - not even in 1993. It is also stated by the learned counsel for the appellants that pursuant to the impugned order, the respondent's case was considered by the DPC but it found him not fit for promotion. Be that as it may, in the absence of any clear allegation against any particular official and in the absence of impleading such person eo nomine so as to enable him to answer the charge against him, the charge of mala fides cannot be sustained. It is significant to notice that the respondent has not attributed any mala fides to the Inspector General of Prisons who made his report dated 9-1-1987. In this report, the inspector General of Prisons had found that respondent responsible for the incident - relevant portions extracted hereinbefore - and recommended his suspension pending enquiry.

In State of Madhya Pradesh and Others Vs. Ashok Deshmukh and Another, the Apex Court held at paras 11 and 12 as hereunder:

"With respect to the High Court it has to be stated that having observed that there was no material to support the allegation of any bias and mala fide on the part of the Secretary to the Government it committed an error in assuming that the basis of impugned Order of repatriation could only be the displeasure of his superiors which the 1st respondent had incurred by reason of the wrong complaints of a Member of the Legislative Assembly. It is significant that the Order is silent about the names of those superiors who were displeased on account of the allegations said to have been made by the Member of the Legislative Assembly. This part of the Order of the High Court is based on mere surmise. The High Court overlooked that the allegations of bias and mala fides are easily made but when it comes to the question of proof of such allegations, very often there will be no material in support of them. This is one such case. If mere existence of some allegations against an officer which on inquiry had been found to be untrue is to be treated as the basis for quashing any Order of transfer or repatriation made in respect of any officer then almost every such Order of transfer or repatriation would have to be quashed because there would always be some complaint by some party or other against every officer. Unless the Court is sure that the impugned Order is really based upon such allegations it should not proceed to quash administrative orders which are made in the exigencies of the administration.

The counter-affidavit filed on behalf of the State Government before the High Court also shows that some other officers who had been posted on deputation like the 1st respondent also had been reverted to their parent department and again some of them had been posted back as Block Development Officers. Perhaps even in the case of the 1st respondent a similar Order posting him back as Block Development Officer would have been passed by the State Government had he not filed the suit and then the writ petition making it difficult for the State Government to take a decision on the question of again posting him as a Block Development Officer during the pendency of the proceedings. The impugned Order of repatriation passed in respect of the 1st respondent does not on the face of it show that there is any stigma attached to the 1st respondent by reason of the said order. We are clearly of the opinion that the allegations of bias and mala fides made against Smt. Nirmala Buch have remained unsubstantiated. The 1st respondent had no vested right to continue on deputation as Block Development Officer. On the material placed before us we do not find that the Order of repatriation is arbitrary and violative of Article 14 of the Constitution. We, therefore, find it difficult to agree with the High Court. The Order passed by the High Court is therefore liable to be set aside. It is quite possible that the 1st respondent may again be sent on deputation as Block Development Officer. That however, is within the discretion of the State Government.

In the decision referred (7) supra, while dealing with the aspect of mala fides it

was held at para 13 as hereunder:

"As noted above, the High Court has not highlighted this aspect of the matter, though the same were brought to the notice of the High Court, we do not know for what reasons, neither we intend to delve into it but the fact remains that the comment of the learned Advocate appearing for the Board during the course of hearing before this Court that the litigations spirit of the petitioner has, in fact brought into effect the exercise of jurisdiction of the writ Court to a ludicrous extent. We do find some justification in the criticism of the learned Advocate for the Board vis-a-vis the conduct of the petitioner/ appellant herein. The petitioner has been, as noted above, from 1989 onwards engaged himself in the law Courts rather than exerting himself in an effort to improve his capability as the employee of the Board so that the Board and the State obtain maximum benefit from out of the services of the petitioner-appellant but unfortunately his litigious spirit prevailed upon him and as noticed above we do find some justification as regards the comment made by the learned Advocate appearing for the Board. Mala fides have been alleged against the statutory Board (Punjab State Electricity Board) but the contextual fact negates such an allegation. Incidentally, be it noted that the expression "mala fide" is not a meaningless jargon and it had its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot be possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depend upon its own facts and circumstances. We ourselves feel it expedient to record that the petitioner had become more a liability than an asset and in the event of there being such a situation vis-a-vis an employee, the employer will be within its liberty to take appropriate steps including the cessation of relationship between the employer and the employee. The service conditions of the Board's employees also provides for Voluntary Retirement, a person of the nature of the petitioner, as more fully detailed herein before, cannot possibly be given any redress against the Order of the Board for Voluntary Retirement. There must be factual support pertaining to the allegations of mala fides, unfortunately there is none. Mere user of the word "mala fide" by the petitioner would not by itself make the petition entertainable. The Court must scan the factual aspect and come to its own conclusion i.e., exactly what the High Court has done and that is the reason why the narration have been noted in this judgment in extenso. Tampering of the Annual Confidential Rolls have been alleged but there is no evidence in regard thereto or even to link up the two private respondents therewith. While it is true that the earlier relationship between an employer and employee or between the employees was that of mutual trust, confidence or welfare, presently the situation in general stands polluted and may be even one degree higher than the pollution of the environment, but that does not however clothe the Court to come to a conclusion of mala fide without there being any evidence being made available to the Court."

Reliance also was placed on the decision referred (6) supra in this regard. While dealing with the aspect of mala fides and burden of proof in Delhi Development

Authority and Another Vs. UEE Electricals Engg. (P) Ltd. and Another, it was held at para 16:

"Doubtless, he who seeks to invalidate or nullify any act or Order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fide in the sense of improper motive should be established only by direct evidence. But it must be discernible from the Order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. It cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high Order of credibility. As noted by this Court in E.P. Royappa Vs. State of Tamil Nadu and Another, ."

In Union of India (UOI) Vs. Kuldeep Singh, while dealing with the expression "discretion" it was held at paras 20, 21 and 24 as hereunder:

"When anything is left to any person, Judge or Magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law. (See Tomlins's Law Dictionary) In its ordinary meaning, the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty of power of acting without other control than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore whoever hath power to act at discretion, is bound by the Rule of reason and law, (See Tomlin's Law Dictionary).

Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colorable glosses and presences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules

of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. Ant it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought of confine himself (Per Lord Halsbury, L.C., in *Sharp v. Wakefield* (1891) A C 173 ). Also See *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, .

Such discretion is usually given on matters of procedure or punishment, or costs of administration rather than with reference to vested substantive rights. The matters which should regulate the exercise of discretion have been stated by eminent judges in somewhat different forms of words but with substantial identity. When a statute gives a judge a discretion, what is meant is a judicial discretion, regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is given on the assumption that he is discreet (Per Willes J. in *Lee v. Bude Torrington Junction Railway Co.* (1871) LR 6 CP 576, and in *Morgan v. Morgan* 1869 LR 1 P & M 644)."

In *Medley Minerals India Ltd. Vs. State of Orissa and Others*, it was observed that it is trite that plea of mala fides has to be specific and demonstrable and the person against whom the mala fides are alleged must be made a party to the proceedings and given reasonable opportunity of hearing.

The undernoted decisions also may be usefully referred to in this context:

*Barium Chemicals Limited v. Company Law Board* 1967 SC 295 *Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, , *The Regional Manager and Another Vs. Pawan Kumar Dubey*, , *Jaichand Lall Sethia Vs. State of West Bengal and Others*, and *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, .

14. Certain of the principles which may be enumerated in relation to the ground of mala fides may be as hereunder:

(1) Arbitrary exercise of power; (2) Improper exercise of discretion for apparent reasons; (3) Perverse reasons (4) Authority exercising excess or abuse of power for extraneous purpose; (5) Reasonable and inescapable inference even in the absence of proof by direct evidence; (6) Order made without application of mind; (7) Order made for a purpose other than mentioned on the face of the order. These principles are no doubt illustrative but not exhaustive.

15. As already referred to supra, submissions at length were made on the ground that the impugned Order was made by the 2nd respondent and the 2nd respondent was not impleaded as a party eo nomine. It is pertinent to note that the specific ground is that at the instance of the 4th respondent, who had been impleaded eo nomine, the decision making process had been influenced and without application of mind specifying certain vague reasons the Order of suspension had been made. In the backdrop of these facts, this ground of mala fides may have to be appreciated. It is pertinent to note that in none of the

crimes/ cases referred to, the writ petitioner was the Investigating Officer. At the best he was a supervising officer being a higher authority. Apart from this aspect of the matter, the language employed in the Order impugned in the O.A. also would throw some doubt or suspicion that the impugned Order was made for certain extraneous reasons and not for the reasons as reflected on the face of the order. Apart from this aspect of the matter, on a careful scrutiny of the order, it is clear that even Rule 8 (1)(a) of the Rules also had not been complied with though some reference to the disciplinary proceedings had been just made. Definitely the same is not in compliance of the said rule.

16. Be that as it may, here is a case where a Police Officer is making a serious complaint of malice in action regarding Order of suspension. It is no doubt true that no specific mala fides had been alleged as against the 2nd respondent nor the 2nd respondent was impleaded eo nomine as a party. The impugned Order is preceded by a transfer Order which is being contended as an Order of surrender. Specific allegations had been made as against the 4th respondent and there is no specific denial by the 4th respondent, most probably in the light of the fact that the 3rd respondent did not make the impugned Order but only made the prior Order of transfer. When the specific stand is that the decision making process by the 2nd respondent had been influenced by the 3rd respondent and the 2nd respondent did not apply his mind but recorded certain reasons mechanically and made the impugned Order just to satisfy the 3rd respondent, it would be far more necessary on the part of the 4th respondent who had been impleaded eo nomine as a party to deny the allegations specifically but for reasons best known the same had not been done. Apart from this aspect of the matter, there should be some reasonable nexus between the reasons as recorded in the Order of suspension and should reflect the purpose for which the same had been thought of. Evidently, the said nexus is clearly absent in the present case.

17. Whether the Order impugned in the O.A. be sustained or be set aside:

The power of judicial review of Constitutional Courts cannot be limited by the technical objections unless the same would amount to manifest illegality. Constitutional Courts can touch and rectify any injustice in any corner amenable to their extraordinary powers and jurisdiction and no doubt they are to be exercised within bounds taking into consideration the facts and circumstances of a given case. Rendering substantial justice to be the general -principle and Constitutional Courts cannot impose on themselves any fetters in undoing manifest injustice in the decisions of this nature where balance may have to be maintained in this regard while enforcing public law remedies. Suffice to state that the Constitutional Courts are to act with due care and caution in safeguarding the rights of the affected parties. In the backdrop of the aforesaid principle, it may be further pertinent to refer to certain of the decisions cited in this regard when an Order of suspension may be resorted to. As already referred to supra, even Rule 8(1 )(a) of the Rules had not been complied with. No doubt, the learned Advocate General had pointed out to the portion of the Order where

the words "..... until the conclusion of the disciplinary proceedings....." had been employed. But this cannot be said to be compliance of the aforesaid provision. Be that as it may, the beginning portion of Order reads as hereunder:

"Whereas it has come to the notice of the undersigned alleging that Sri P. Chandra Mouli, formerly ACP Banjara Hills, Hyderabad has exhibited grave misconduct, incorrigible, indifferent, indisciplined and irresponsible towards his legitimate duties and also he committed serious lapses in the matters relating to (1) Cr.No. 168/2004 u/s 307 IPC, 25(1), 27 Arms Act of Jubilee Hills Police Station; (2) Case Cr. No. 704/04 Under Sections 406, 420 IPC of Banjara Hills Police Station; (3) Case in Cr. No. 42/2005 Under Sections 427, 447 IPC of Banjara Hills P. S. and (4) Cr. No. 17/2005 Under Sections 147, 148, 427, 323 IPC of Jubilee Hills Police Station and his conduct in matters relating to civil disputes, property disputes or handling of certain issues had been questionable on more than one occasion. He has also failed to supervise several important Criminal cases in his Sub-Division."

The language employed and also repetition of the word or expression "public interest" and non-referring to any report on the basis of which the alleged impugned Order is said to have been made by the 2nd respondent and also the fact that on 17-1-2005 it was preceded by an Order made by the 3rd respondent would definitely lead to the irresistible inferential conclusion that the impugned Order had been made for certain extraneous reasons and not for the purpose or object for which the said Order is expected to be made in law. In the decision referred (1) supra, it was held at paras 7 and 9 as hereunder:

"The power of the State Government to place a Government servant under suspension is derived from Rule 10 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. Under its provisions the appointing authority may at any time place a Government servant under suspension where a disciplinary proceeding against him is contemplated or is pending. Despite the apparent wide wording employed in the rule, it is now well settled that the object underlying the conferment of the said power is to enable the appointing authority to remove an officer to whom serious allegation of misconduct are imputed, from the sphere of his activity if: (a) the allegations against him are such that in the interests of the maintenance of the purity and probity of the administration or the upkeep of proper standards of discipline and morale in the service it will not be desirable to allow the officer to continue in service until he is cleared of the charges; or (b) where the position occupied by the officer is such that his continuance in service would render the conduct it investigation against him difficult or embarrassing. If the appointing authority after taking into account the facts and circumstances which are available before it, at that stage forms the opinion that the Government servant against whom serious imputations are made should not be allowed to function anywhere before the matter has been finally set at rest after holding a thorough enquiry, a suspension of the officer from service would be perfectly warranted. See The Government of India,

Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh, and Abdulsalam v. State of Kerala ILR 1972 (1) 296. It is, however, mandatory that before an officer can be validly placed under suspension under Rule 10, the authority passing the Order must address its mind to the relevant aspects and come to the bona fide conclusion that for either of the two reasons mentioned above or both the officer cannot be allowed to function in any post in the service until the enquiry against him is concluded.

.....

Although suspension is not one of the punishments narrated in Rule 11 of the Kerala Civil Services (Classification, Control and Appeal) Rules, as Order of suspension is not to be lightly passed against a Government servant, for the reality cannot be ignored that an Order of suspension brings to bear on the Government servant consequences far more serious in nature than several of the penalties made mention of in Rule 11. It has a disastrous impact on the fair name and good reputation that may have been earned and built up by a Government servant in the course of many years of service. The damage suffered by the Government servant is largely irreversible because the denigration and disgrace visited on him by the Order of suspension is seldom wiped out by being subsequently exonerated from blame and reinstated in service. Hence it is imperative that the utmost caution and circumspection should be exercised in passing orders of suspension under Rule 10 resulting in such grave consequences to the Government servant concerned. It is also necessary to remember that the power of suspension is to be sparingly exercised and that is not meant to be used as a mode of giving expression to any displeasure felt by the appointing authority or the Government in respect of any act of commission or omission on the part of the officer."

In the decision referred (2) supra, a Division Bench of Kerala High Court while dealing with suspension no doubt under Rule 10 of the Kerala Civil Services Rules of 1960, observed:

"There is no controversy that Ext.P-1 Order of suspension was passed by the Government in exercise of the statutory power conferred under Rule 10 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. This Rule states that the appointing authority may at any time place a Government servant under suspension where a disciplinary proceeding against him is contemplated. It is fairly settled that the executive has no absolute power in administrative matters. The Constitution enshrines and guarantees the Rule of law and Article 226 is designed to ensure that each and every authority in the State including the Government acts bona fide and within the limits of its power. The primary purpose of administrative law is the imposition of the checks on the powers of Government of its officers so that they may not either abuse their powers or go out of their legal bounds. Article 14 strikes at arbitrariness in State action and requires that the State action must be based on valid and relevant principles applicable alike to all similarly situated and it must not be guided on extraneous

or irrelevant considerations because an action that is arbitrary must involve negation of equality. This position appears to be settled by the decisions of Supreme Court in *S. Pratap Singh Vs. The State of Punjab*, *E.P. Royappa Vs. State of Tamil Nadu and Another*, *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, *AIR India Vs. Nergesh Meerza and Others*, and *D.S. Nakara and Others Vs. Union of India (UOI)*, .

It is the exigency of the conditions of service which requires to call for an Order of suspension and there can Administrative Service or the State service. The Government is entitled to place an officer under suspension even before definite charges have been communicated, after preliminary investigation has been made into the conduct of the officer concerned following allegations of corruption or malpractices levelled against him. Rule 10 empowers the appointing authority to place a member of the service under suspension when disciplinary action is under contemplation. This Rule read with Rule 15 makes it clear that disciplinary proceedings is contemplated only when the authority concerned is satisfied that there is prima facie case for taking action. It is on the basis of complaint received or on consideration of the report of investigation or for other reasons the authority is to satisfy that prima facie case exists. Therefore either there should be a complaint alleging misconduct or report of investigation or other material for exercising the power of suspension in contemplation of the disciplinary proceedings. As rightly pointed out by the learned Judge the only basis for the action against the 1st respondent in this case is the legal opinion furnished by the law officer on the particular award in one case and the inference there on drawn by the Secretary to Government. The facts and materials on the file when the impugned Order was passed are the only relevant considerations in judging the necessity of the suspension. The letter of the law officer did not contain imputation of improper motive or misconduct in the sense it is understood in disciplinary proceedings. No reference is made in the file regarding other awards passed by the respondent nor is there any allegation of corrupt practices. The inference of improper motive by the Secretary is a mere conjecture and even then the Secretary has only suggested the shifting of the respondent from the post of Chief Engineer (Arbitration) in the interest of the administration. The Chief Secretary however thought it fit to place the respondent under suspension as a deterrent step and to Order a vigilance enquiry. There can be no doubt that the proposed action was on extraneous considerations and not as a prelude to any contemplated disciplinary action after preliminary investigation into the conduct of the officer following allegations of corruption or of malpractice levelled against him. Since the only step taken by the Government was to Order vigilance investigation, in the absence of any serious allegations of misconduct or other materials for prima facie satisfaction of the authority, the power under Rule 10 could not have been exercised before receipt of the report of the investigation. It is not correct to say that the Chief Secretary while recommending the action of suspending the 1st respondent had taken into consideration the nature and

number of awards passed by the respondent or the necessity or desirability of placing the respondent under suspension to facilitate an impartial enquiry. The qualitative and quantitative assessment of the work and conduct of the arbitrator with reference to the other awards appear to have been thought of only in the course of these proceedings before court. The only consideration that weighed with the Chief Secretary in proposing the suspension was that the action should be deterrent in administrative matters. As rightly pointed out by the learned Judge the stage has not reached for punishment and the proposed action was on extraneous consideration. The mala fides of the action lies in the absence of valid considerations. The learned Judge has rightly quashed the impugned Order of suspension with the reservations for future action, if found necessary.....".

In the decision referred (3) supra, while dealing with suspension in public employment and capricious exercise of such power under the West Bengal Civil Services (Classification, Control and Appeal) Rules, 1971, it was held at para 7 as hereunder:

"After considering the respective contentions of the learned Counsel appearing for the parties, it appears to me that although an employer has an inherent power to place an employee under suspension but in a public employment such power cannot be exercised on mere liking of the employer or capriciously. It should be borne in mind that if an employee is kept under suspension, he will be entitled to get the subsistence allowance and without rendering any services such amount is payable to him. If without any cogent reason merely on the liking of the employer by exercising an inherent right an employee of Government or Public Undertaking is kept under suspension and by that process the suspension allowance goes to the employee, not only such action will be arbitrary thereby offending Article 14 of the Constitution but the same will also amount to a loss of public exchequer by not getting any service from the concerned Government employee without any just cause. That apart, in the instant case, when the Regulation 880 of Police Regulations, Bengal specifically deal with the question of suspension. In my view, the inherent power of suspension of an employee must be held to have been circumscribed by the provisions of Regulation 880 and no Order of suspension can be passed if the same does not justify an action of suspension as warranted under Regulation 880. In my view, it has been very rightly held by the Kerala High Court in the aforesaid decision (1973 (1) SLR 521) that suspension Order should not be lightly passed and it is mandatory for the authority to apply its mind and come to a bona fide conclusion that it was not desirable to keep the delinquent officer in service either in interest of purity and probity of administration or his continuing in service of the delinquent employee will render the investigation embarrassing. Mr. Justice Sabyasachi Mukherji (as His Lordship then was) in the other decision of the Calcutta High Court 1981 (1) CLJ 149 has also indicated that the suspension does not follow automatically whenever disciplinary proceeding is pending or contemplated against a delinquent employee. It also appears to me that Regulation 774 does not make the West Bengal Civil Services (Classification, Control and Appeal) Rules, 1971

applicable to the Government employee. The attention of the Court could not have been drawn to any specific provision which applies to a subordinate police personnel in the West Bengal Police Force by which retrospective Order of suspension can be passed. Normally an Order of suspension must be deemed to be prospective because this is a positive action taken by the employer against the employee on consideration of the relevant facts. But in some cases under statutory provision an employee is some times deemed to have been placed under suspension and such provision of deemed suspension appears in the West Bengal Services (Classification, Control and Appeal) Rules. But as the said Rule does not apply in terms to the petitioner, the question of placing him under suspension with retrospective effect is per se illegal and cannot be sustained. In my view, there is enough force in the submissions of the learned Counsel for the petitioner that the petitioner is a Sub-Inspector of Police attached to the Computer Cell at Burdwan and for the alleged offence of assaulting his friend's wife at Chinsurah, his presence in the Office at Burdwan does not appear to have caused any problem for causing an investigation by the local police in the district of Hooghly where the alleged incident of assault had taken place. It appears to me that the Superintendent of Police has not adverted to Regulation 880 and only mechanically passed the Order of suspension by placing the petitioner under suspension with retrospective effect without taking into consideration the relevant facts for which, in an appropriate case, the police officer can be placed under suspension."

18. The competency of the 2nd respondent to make the impugned Order of suspension is not in serious controversy. In the light of the specific stand taken by the writ petitioner and also on a careful scrutiny of the impugned Order made in the O.A. preceded by the Order of transfer, ordering surrender as the case may be by the 3rd respondent and non-denial of specific allegations of mala fides by the 4th respondent, the eo nomine party, would definitely establish that the action of making an Order of suspension is not bona fide and it was for certain extraneous reasons and hence the said Order tainted with inferential mala fides cannot be sustained and accordingly the same is hereby quashed.

19. To what relief: For the foregoing reasons recorded in detail, the Writ Petition is allowed. Costs quantified at Rs. 10,000/- to be paid by the Officer holding the office of the 2nd respondent at present and also the 4th respondent. The Order of payment of costs from the Officers concerned is being made keeping in view the facts and circumstances of the case.