
(2015) 10 OHC CK 0017
In the Orissa High Court
Case No : W.P.(C) No. 7825 of 2015

Bishnu Prasad Sahoo

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 314
Criminal Procedure Code, 1973 (CrPC) — Section 482
General Clauses Act, 1897 — Section 16
Penal Code, 1860 (IPC) — Section 109, 394, 397, 467
Prevention of Corruption Act, 1988 — Section 13(1)(e), 13(2), 17

Citation : (2015) 10 OHC CK 0017

Hon'ble Judges : S.N. Prasad, J.

Bench : Single Bench

Advocate : R.K. Rath, Senior Advocate and P.K. Rout, for the Appellant; Amit Patnaik, Addl. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Prasad, J.—This writ petition has been filed by assailing the order dated 13.12.2012 passed by the Secretary, Cuttack Development Authority by order of the Vice-Chairman by which order of suspension dated 6.12.2012 has been modified to the effect for fixing headquarters of the petitioner during the suspension period and for payment of subsistence allowance during period of suspension.

2. Brief facts of the case is that the petitioner who was working as Junior Town Planner in the Cuttack Development Authority having been joined in service on 8.11.1995, transferred to Bhubaneswar Development Authority in the year 2006, again transferred to Cuttack Development Authority on 10.11.2010 and while working under the Cuttack Development Authority a vigilance raid was conducted in the residential premises of the petitioner by Vigilance Wing of the State and on raid disproportionate property has been seized, petitioner was arrested on 1.12.2012, remanded to judicial custody, petitioner subsequently been released

on bail by order passed by this Court in BLAPL No. 32332 of 2012. Petitioner has been put under suspension on the instruction of the Vigilance Department who has directed the opposite party No. 2 vide office order dated 10.12.2012 to put the petitioner under suspension since petitioner has remained under custody for period of 48 hours on the allegations made under section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 read with section 109 of the Indian Penal Code, accordingly petitioner was put under suspension vide memo No. 22857 dated 13.12.2012 fixing headquarters at BDA, Bhubaneswar.

3. Learned senior counsel appearing for the petitioner has submitted that since the date of suspension no charge sheet has been submitted even lapse of about three years from the date of raid, hence authorities have got no power to keep the petitioner under suspension for indefinite period that too without any latches on his part.

Further contention of the learned counsel for the petitioner is that the authority is supposed to revoke the order of suspension in view of the instructions dated 29.5.1995 but the authorities are not following the same.

Petitioner has relied upon judgments in the case of (1) P.L. Shah Vs. Union of India (UOI) and Another, , (2) Bhaktaram Purohit Vs. Chief Engineer, Electricity and Member T.D.C., Orissa State Electricity Board and Another, , (3) Manas Ranjan Das v. State of Orissa, reported in 1973(2) SLR 553 , Ajay Kumar Choudhury v. Union of India,(Civil Appeal No. 1912 of 2015 disposed of on 16.2.2015) and Public Services Tribunal Bar Association Vs. State of U.P. and Another, .

4. Assailing the correctness of order of suspension learned Senior Counsel appearing for the petitioner has vehemently argued that the authority cannot keep an employee under suspension in an indefinite period, power of suspension has to be exercised with utmost care, authority has power to keep an employee under suspension but the period of suspension cannot go for indefinitely, the investigation is still going on and even after lapse of about three years charge sheet has not been submitted, hence the petitioner cannot be put under suspension.

5. On the basis of the counter affidavit filed by the Cuttack Development Authority submission has been advanced on behalf of the authority that petitioner has been put under suspension in exercise of power conferred under Sub-Rule(2) of Rule 12 of the Orissa Civil Service (Classification, Control and Appeal) Rules, 1962, (hereinafter referred to as OCS Rule, 1962) vide order dated 6.12.2012 on the ground that petitioner has been found to be in possession of property/assets which is not known to his known sources of income and accordingly regular case has been registered against the petitioner and his wife Smt. Dipti Choudhury under section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 read with section 109 of the Indian Penal Code, in course of investigation petitioner was found to be in possession of disproportionate assets

to his known sources of income to the tune of Rs. 1,39,72,290/- and as such invoking power conferred under section 12(2) of the OCS Rule, 1962 petitioner was put under suspension. Petitioner is being paid subsistence allowance initially to the extent of 50% but subsequently it has been enhanced under statute to the extent of 75% and at the moment he is getting 75% subsistence allowed.

6. During pendency of the criminal case a departmental proceeding has been initiated against the petitioner under Rule 15 of the OCS Rule, 1962 in which petitioner has been served with memo of charges, with a direction to give reply within 30 days but till date no reply has been submitted by the petitioner in the departmental proceeding. Vigilance Department is continuing with the investigation and as such at this moment order of suspension needs no interference on account of serious nature of allegations otherwise there is every likelihood of tampering with the evidence and the employee against whom serious charge of moral turpitude is alleged, his continuance in service will encourage corruption.

7. Opposite party-State has appeared, opposed prayer of the petitioner by filing counter affidavit stating therein that the petitioner being an employee of the Housing and Urban Department has been dealt with by exercise of power conferred upon the State under section 12(2) of the OCS Rule, 1962 considering serious nature of allegation related to moral turpitude.

8. Heard learned counsel for the parties and perused the documents available on record.

9. Some of the disputes which arise for consideration in this writ petition are:

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

(ii) Whether time limit prescribed for revocation of suspension in Memo No. 21934 dated 29.5.1995 is applicable mandatorily?

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

(iv) Whether a government servant placed under suspension for involvement in serious offences/misconduct, involving moral turpitude can seek for retention in

service in any insignificant post or seek for transfer, on the sole ground that the suspension is prolonged pending investigation/trial?

(v) Whether judgment rendered in the case of A.K. Choudhury is applicable in the facts and circumstance of this case."

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

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

Suspension connotes temporary cessation of something as right, work or labour. The basic idea underlying the root word, suspend and all its derivatives is that a person while holding an office and performing its functions of holding a position or privilege should be interrupted in doing so and debarred for the time being from further functioning in the office or holding the position and privilege. He is intercepted in the exercise of his functions of his employment of the privilege and put aside, as it were, for a time, excluded during the period from his functions or privileges. Such is the concept of a suspension order.

11. In the case in hand petitioner while working as Junior Town Planner and when his houses were raid huge assets have been recovered which was not known to his known sources of income and accordingly criminal case was instituted under the provisions of under section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 read with section 109 of the Indian Penal Code and the petitioner was taken into judicial custody and when petitioner was suspended remained in judicial custody for more than 48 hours, he was put under suspension in exercise of power under Rule 12 of the OCS Rule, 1962. Power of the State Government to place a Government servant under suspension is given under Rule 12 of the OCS Rule, 1962 which reads as follows:

"12-Suspension- (1) The appointing authority or any authority to which it is subordinate or any authority empowered by the Government or the appointing authority in that behalf may place a Government servant under suspension-

(a) Where a disciplinary proceeding against him is contemplated or is pending, or
(b) Whether a case against him in respect of any criminal offence is under investigation or trial.

(2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of detention, by an order of the appointing authority and shall remain under suspension until further orders.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of law and disciplinary authority, on a consideration of the circumstances of the case decides to hold a further inquiry against him of the allegations on which the penalty of dismissal; removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original orders of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

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

(6) The disciplinary authority, while passing the final order of punishment or of release in the disciplinary proceedings against the Government servant, shall give directions about the treatment of the period of suspension, which is passed not as a measure of substantive punishment but as suspension pending inquiry, and indicate whether the suspension would be a punishment or not."

12. In *R.P. Kapur Vs. Union of India (UOI) and Another*, , the Supreme Court considered the rights of a Government servant during the period of suspension and the power of the government to place him under suspension. At Paragraph 11, the Apex Court held as follows:

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

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

The power of the appointing authority/disciplinary authority/government to place the government servant under suspension, even before the formulation of specific charges is upheld in *Balvantray Ratilal Patel Vs. The State of Maharashtra*, where the Supreme Court held that the Government may rightly take the view that an officer against whom serious imputation are made should not be allowed to function anywhere before the matter has been finally set at rest after proper scrutiny and holding of departmental proceedings. Ordinarily, when serious imputation are made against the conduct of an officer, the disciplinary authority cannot immediately draw up the charges, it may be that the imputations against an officer and a definite conclusion by a superior authority that the circumstances are such that definite charges can be leveled against the officer. Whether it is necessary or desirable to place the officer under suspension even before definite charges have been framed would depend upon the circumstances of the case and the view which is taken by the Government concerned. There would be nothing improper per se if the rules were to provide for suspension even before definite charges of misconduct had been communicated to the officer concerned. In principle there is no difference between the position of an officer against whom definite charges have been framed to which he is required to put in his written statement and a situation where on receipt of allegations of grave misconduct against him after the

Government is of the opinion that it would not be proper to allow the officer concerned to function in the ordinary way. The order in this case shows that serious allegations of corruption. In substance, disciplinary proceedings can be said to be stated against an officer when complaints about his integrity or honesty are entertained and followed by a preliminary enquiry into them culminating in the satisfaction of the Government that a prima facie has been made out against him for framing of charges. When the order of suspension itself shows that the Government was of the view that such a prima facie case for departmental proceedings had been made out, the fact that the order also mentions that such proceedings were contemplated makes no difference.

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

"The doctrine that powers must be exercised reasonably has to be reconciled with no less important doctrine that the Court must not usurp the discretion of the public authority, which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The Court must therefore resist the temptation to draw the bounds too lightly, merely according its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the Legislature is presumed to have intended. Decisions which extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the courts function to look further into its merits."

In *Bhup Narayan Jha Vs. State of Bihar and Others*, , a Full Bench of the Patna High Court dealt with rule 49A of the Bihar Services (Classification, Control and Appeal) Rules, 1930, which rule is pari materia with rule 17 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. Rule 49A of the Bihar Services (Classification, Control and Appeal) Rules, 1930 is extracted hereunder:

"49(A)(1):---The appointing authority or any authority to which it is subordinate or the Governor, by general or special order, may place a Government servant under suspension:

- (a) Where a disciplinary proceeding against him is contemplated or is pending; or,
- (b) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial."

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

"In this context it becomes necessary to first consider the very nature of an order of suspension made either during the pendency of a departmental proceeding or in reasonable contemplation thereof. It is well settled that suspension is of two

kinds -- one by way of punishment, and the other by way of a procedural aid to the holding of disciplinary proceedings. Admittedly herein we are concerned with the latter category. It seems to be undisputed that the concept of suspension during departmental proceeding has only the large objective of ensuring a free and fair conduct of the enquiry that is either pending or is to follow. In this context, the fact that the suspension order is interlocutory or interim in nature can perhaps be hardly denied. The service rules invariably, if not inflexibly, provide for a subsistence allowance during the period and the delinquent official retains his lien on the post during the continuation of the departmental proceeding. This mellows the rigour of the order of suspension and in the event of the enquiry resulting in favour of the official, he would be invariably entitled to the revoking of the order of suspension and the reinstatement to the post with all the benefits of service and salary, (sometimes even without having worked during the said period), as may be provided in the rules. There is thus no finality or irrevocability attaching to an order of suspension, which, as already noticed, retains its character or being interim or interlocutory, in nature.

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

In Director General and Inspector General of Police, Andhra Pradesh, Hyderabad

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

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

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

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

In U.P. Rajya Krishi Utpadan Manti Samiti Parishad v. Sanjiv Rajah reported in

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

The Supreme Court in the above reported case, further observed that what the appointing authority is required to do was to set out as much minimal facts in the order of suspension as may be sufficient to disclose that the charge against the police officer was connected with his position as a police officer or was likely to embarrass him in the discharge of his duties or involves moral turpitude. This, Court, while exercising power of judicial review under Article 226 of the Constitution should not ordinarily interfere with the orders of suspension unless they are passed mala fide and without there being even prima facie evidence on record connecting an employee with the misconduct in question.

In State of Orissa Vs. Bimal Kumar Mohanty, , while the respondent was working as Manager of Orissa State Guest House at Bhubaneswar, the Government Audit Department audited the accounts for the periods from 1984-85 to 1990-91 and noted serious financial irregularities, fabrication of records and vouchers and misappropriation to the tune of Rs. 163.59 lakhs. Thereafter certain other financial irregularities relating to purchase of woollen carpets etc. apart from suppression of audit objections had also come to light. On March 17, 1993, the appointing authority, after considering the record, passed an order directing inquiry into the irregularities and also decided to keep him under suspension pending further action. On the same day, the State Administrative Tribunal, Bhubaneswar, by an interim order, directed not to suspend the respondent. Subsequently, the Vigilance searched the respondents

house and found him to be in possession of disproportionate assets to the tune of Rs. 11.44 lakhs. Accordingly, the crime was registered in Crime No. 46 under Section 3(2) read with Section 13(1) of the Prevention of Corruption Act, 1947 and continued with the investigation. Based on the above, the petitioner therein was placed him under suspension and again, the Tribunal suspended the suspension order. The State Government took the matter on appeal directly to the Supreme Court. After considering various judgments in R.P. Kapur Vs. Union of India (UOI) and Another, , Balvantray Ratilal Patel Vs. The State of Maharashtra, V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, , The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh, and U.P. Rajya Krishi Utpadan Manti Samiti Parishad v. Sanjiv Rajah reported in 1993 (2) LLJ 66, the Supreme Court, at Paragraphs 13 and 14, held as follows:

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

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

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

It is useful to extract the judgment made in *The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh*, , considered in *Biman Kumar Mohantys* case (cited supra) and they are reproduced hereunder:

"Serious allegations of corruption and malpractices had been made against the respondent, a member of the Indian Police Service, serving in the State of Bihar. Inquiries made by the State Government revealed that there was a prima facie case made out against him. He was suspended by an order which stated that disciplinary proceedings were contemplated against the respondent.

On the question whether the suspension of a member of the service can only be ordered after definite charges have been communicated to him in terms of Rule 5(2) of the All India Services (Discipline and Appeal) Rules, 1955, or whether the Government is entitled to place him under suspension even before that stage has been reached after a preliminary investigation.

Held: (1) The fact that in other rules of service there is specific provision for an order of suspension even when disciplinary proceedings were contemplated, does not mean that a member of the All India Service should be dealt with differently. It would not be proper to interpret the Rules, which form a self-contained Code, by reference to the provisions of other rules even if they were made by or under the authority of the President of India."

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

Supreme Court, at Paragraph 10, observed as follows:

"In our opinion the aforesaid observations correctly spell out the true meaning of the expression moral turpitude. Applying the aforesaid test, if the allegations made against the respondent are proved, it will clearly show that he had committed an offence involving moral turpitude and, therefore, the appellant had the jurisdiction to suspend him under the aforesaid clause 19.3. The High Court observed that there was nothing on record to suggest that the management had formed an opinion objectively on the consideration of all relevant material available against the petitioner that in the circumstances of the case the criminal acts attributed to the petitioner implied depravity and vileness of character and are such as would involve moral turpitude. It did not regard entering into a criminal conspiracy to commit the aforesaid offences as being an offence involving moral turpitude. We are, to say the least, surprised at the conclusion which has been arrived at by the Allahabad High Court. There was material on record before the appellant, in the form of the report of the CBI/SPE, which clearly indicated the acts of commission and omission, amounting to moral turpitude alleged to have been committed by the respondent. Furthermore the respondent has been charged with various offences allegedly committed while he was working in the Bank and punishment for which could extend up to ten years imprisonment (in case the respondent is convicted under Section 467 IPC).

(emphasis supplied)

The Supreme Court set aside the order of the High Court, quashing the order of suspension."

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

"8. Corruption in a civilized society is a disease like cancer, which if not detected in time, is sure to malignancies (sic) the polity of the country leading to

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

9. The menace of corruption was found to have enormously increased by the First and Second World War conditions. Corruption, at the initial stages, was considered confined to the bureaucracy which had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war the opportunities for corruption continued as large amounts of government surplus stores were required to be disposed of by the public servants. As a consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of postwar reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants giving them a wide discretion with the result of luring them to the glittering shine of wealth and property. In order to consolidate and amend the laws relating to prevention of corruption and matters connected thereto, the Prevention of Corruption Act, 1947 was enacted which was amended from time to time. In the year 1988 a new Act on the subject being Act 49 of 1988 was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of the 1947 Act. The law relating to prevention of corruption was essentially made to deal with the public servants, not as understood in common parlance but specifically defined in the Act.

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

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

(emphasis supplied)."

When the authority has considered the gravity of the charge, pending trial and placed the government servant under suspension pending trial, it is not for this Court to substitute its views to that of the authority and order reinstatement,

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

An order of suspension, during the pendency of the disciplinary inquiry, is ordinarily not to be interfered with by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India, unless and until, the Court comes to a conclusion that the order was malafidely passed; or that the appropriate authority had not passed the order of suspension.

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

There is no statutory provision for review of suspension in the case of criminal cases and the time limit prescribed in the above said G.O., is not applicable,

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

The Apex Court in *Allahabad Bank and Anr. (supra)* has made it clear that "the mere fact that nearly ten years have elapsed since the charge-sheet was filed, can also be no ground to allow the respondents to come back to duty on a sensitive post, unless he is exonerated of the charge". In that case a delinquent was an employee of the Bank who allegedly had committed forgery and wrongful withdrawal of money and was under suspension. The Apex Court had further observed that ordinarily, when there is accusation of corruption, the delinquent has to be kept away from establishment till the charges are finally disposed of.

We draw support from the aforesaid observations of the Apex Court to hold that a public servant who is charged of corruption should be kept away from the office until he is judicially absolved. Merely because a trial of such public servant is being delayed, that by itself should not be a ground for passing an order of reinstatement. If such public servant is reinstated and allowed to continue to do official acts until he is judicially absolved from the charge of corruption, by reason of reinstatement order it is public interest which suffers and sometimes even irreparably. When such public servant is allowed to hold public office, it would impair the morale of other persons manning such office and consequently that would erode already shrunk confidence of the people in such public institution besides demoralising the other honest public servants who would either be his colleagues or subordinates. If honest public servants are compelled to take orders from officer, facing charges of corruption on account of setting aside the suspension the fallout would be one of shaking the system itself. As against this if a public servant, who is facing the charge of corruption, is acquitted in trial or is finally absolved of the charge of corruption, the order of suspension can always be revised and if such public servant is reinstated he will be entitled to all the benefits to which he would have been entitled to had he continued in service. It is also open for such public servant to approach the appropriate court for expediting the trial but he cannot seek reinstatement on the ground that the trial is not likely to commence early or is likely to be prolonged.

In *State Bank of India and Another Vs. Rattan Singh*, , the respondent was placed under suspension on 23.07.1993 for certain acts of misconduct involving a sum of Rs. 3 Lakhs against a Cheque, dated 19.07.1993, in respect of an alleged current account in the name of Mr. H.P. Sharma, which current account was not existing. An FIR was lodged on 30.09.1993, after the appellant-Bank collected the relevant documents, along with other evidence. Thereafter, an investigation was conducted by the CBI and that a criminal case was filed. The respondent therein filed a writ petition, challenging the order of suspension,

contending inter alia that no departmental enquiry was initiated and that he was kept under suspension for more than three years. The High Court dismissed the said writ petition, challenging the order of suspension. The Division Bench, set aside the same and therefore, the bank preferred an appeal to the Supreme Court.

After considering the judgment made in Allahabad Bank and Another Vs. Deepak Kumar Bhola, , the Supreme Court allowed the appeal filed by the Bank, holding that the suspension is valid on the basis of its earlier decision in Punjab National Bank and Others Vs. Jagdish Singh, , where the Supreme Court had already taken a view that the Bank has the power to suspend the employee under the Bipartite Settlement clauses.

Corruption is forbidden by law, an offence involving moral turpitude or exactly opposite of dishonesty involving intentional disregard to law. When the misconduct of the government servant attracts criminal liability, for which, penal laws provide for severe punishments, like sentencing to rigorous imprisonment, the period depending upon the gravity of the offence, like in the instant case, imprisonment for a maximum period of 7 years, besides fine or both, it should be left to the absolute discretion of the appointing/disciplinary authority/government to place a government servant under suspension, pending investigation/trial. Persons involved in serious charges of corruption, embezzlement, misappropriation of government funds or crimes attracting severe punishments cannot be equated with others, discharging their duties honestly. Courts should not obstruct the powers of the appointing/disciplinary, authority/government, from forbidding such persons from discharging their duties, at least till the trial is over.

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

No Government servant, particularly a person charged with a misconduct of corruption, has right to insist that he should be retained in service and allowed to discharge his duties and enjoy the privileges of the post held by him, during the

pendency of the enquiry into grave charges or trial, involving moral turpitude and it is the absolute discretion of the appointing/disciplinary authority or the Government to suspend such government servant from discharging the duties attached to the post and to forbid him from exercising the privileges, except to the extent of payment of salary, regulated in the Statute or rules, applicable to the case of such Government servant.

No doubt, the exercise of discretion, should be rational, should not be arbitrary and that there is also a legal duty cast upon the appointing/disciplinary authority/Government to apply its mind before exercising such discretionary power. However, when the government servant against whom, an enquiry into grave charges or an investigation into an offence or trial is pending and such charge/charges, involves moral turpitude, then the competent authority can exercise his discretionary power under Rule 12 of the Orissa Civil Service (Control, Classification and Appeal) Rules 1962 and place the government servant under suspension, pending enquiry into grave charges under contemplation into charges/enquiry into formulated charges/investigation/trial.

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

The duty of the Court is restricted only to the limited extent to see that where the appointing/disciplinary authority has taken into consideration the nature of the charge, its complexity, the public interest involved in retaining the government servant, against whom, serious imputation of corruption, misappropriation, embezzlement, etc., are levelled and whether retention of such person, would be scandalous to the department or sub-serve the discipline in the department or affect the morale of other government servants.

The appointing/disciplinary, authority/government is entitled to exercise the control and maintain the master and servant relationship. To suspend an employee, as an interim measure for any one of the reasons stated supra, which are illustrative, is the absolute right of an employer and no employee can insist that he must be allowed to be retained in service and discharge his duties and enjoy the fruits or privileges attached to the post. While testing the correctness of the order of suspension, all that has to be seen by the Court is whether the power of the appointing/disciplinary authority, in controlling the employees, has been exercised reasonably, without any mala fide and that there should not be any lack of jurisdiction. Any action taken by the appointing/disciplinary authority, in public interest to maintain a clean and honest administration, cannot be interfered with lightly. Even though the government servant is put to mental

agony, it is only to the limited extent of restricting him from discharging his duties and enjoy other privileges attached to the post and it is only an interim measure, till he is cleared off of the imputations levelled against him. The suspension cannot be attacked on the ground that the facts stated therein are not correct. It is well settled that the High Court cannot delve into the factual details, while adjudicating the correctness of an administrative order.

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

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

13. In the instant case the ground taken by the petitioner for revocation of suspension that suspension cannot prolong for indefinite period when there is no delay on the part of the petitioner, while on the other hand learned counsel for the opposite party-State's contention is that since allegation against the petitioner is of moral turpitude touching corruption, hence authorities have acted upon the power to put an employee under suspension in exercise of powers conferred under the provisions of Rule 12(2) of the OCS Rule, 1962 and accordingly the authorities have passed order of suspension, hence in the light of allegations investigation is going on, departmental proceeding has also been initiated but in which petitioner is not cooperating with the departmental proceeding, but without going into these controversies the facts remains that allegations against the petitioner is related to moral turpitude of accumulation of huge amount of assets not known to his known sources of income, hence the Court is suppose to look into the action of the authorities who have put the petitioner under suspension as to whether decision taken by the authorities is in accordance with law, whether suffers from any malice or order lacks jurisdiction or authorities have acted with arbitrary exercise of power i.e. sum and substance it is to be seen as to whether order of suspension is touching Article 14 of the

Constitution of India or not.

14. In view of the various decisions which has been referred herein above, it is evident that power exercised by the authority in good faith and for legitimate reasons in public interest and social interest and to effectuate the purpose for which it is conferred on the authorities cannot be said to have been exercised arbitrarily. It is also settled that courts being custodian of law should not interfere with the orders of suspension, in the case of corruption, embezzlement or misappropriation of government money and retention of such persons would pollute and contaminate the department. The effect of retention of such persons in service pending trial would demoralize the other government servants, frustrate the object of the Prevention of Corruption Act. Therefore, action of the opposite parties in keeping the said government servant away from the sphere of his activities on the ground of criminal trial is prolonged for considerable time, cannot clothe any right to seek in retention in service, hence in view of the facts and circumstances of this case it cannot be said that the action of the authority is against Article 14 .

15. Petitioner has relied upon judgments in the case of P.L. Shah v. Union of India (supra), but the facts of the said case is totally different with the facts of the present case. In that case subject matter was delay in departmental proceeding but here in this case involvement of the petitioner in a criminal case of moral turpitude, likewise other judgments rendered in the case of Bhaktram v. Chief Engineer (supra), fact of the said case is also different to that of the case since related with delay in departmental proceeding and not related with the criminal case involving moral turpitude of government servant.

Likewise in the case of Manas Ranjan Das v. State of Orissa(supra) and Public Service Tribunal Bar Association v. State of U.P(supra) facts of the cases are different with the present case. In this case subject matter was delay conclusion of departmental proceeding but not related to criminal case.

16. Learned counsel for the petitioner has given much insistence upon the judgment of the Hon"ble Supreme Court in the case of Ajay Kumar Choudhury v. Union of India,(Civil Appeal No. 1912 of 2015 disposed of on 16.2.2015), from perusal of the said judgment it is evident that the facts of the case is different not related to criminal case pertaining to moral turpitude. However, since no proposition has been laid down, hence judgment rendered in the said case will not be applicable to the facts and circumstances of the case on the basis of the principle that there cannot be general application of judgment unless some proposition has been laid down and application will depend upon the facts and circumstances of each case.

In this regard, reference of judgment of the Hon"ble Apex Court in the case of Balwant Rai Saluja Vs. Air India Ltd., worth to be seen wherein at paragraph-25 their Lordships has held:

"In our view, the binding nature of a decision would extend to only observations

on points raised and decided by the Court and neither on aspects which it has not decided nor had occasion to express its opinion upon. The observation made in a prior decision on a legal question which arose in a manner not requiring any decision and which was to an extent unnecessary, ought to be considered merely as an obiter dictum. We are further of the view that a ratio of the judgment or the principle upon which the question before the Court is decided must be considered as binding to be applied as an appropriate precedent."

17. In the light of the principles of the Hon'ble Supreme Court and for the reasons explained herein above, there is no manifest illegality in the order of suspension, hence the writ petition is dismissed.