

(2015) 06 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7618 of 2015

Buddana Venkata Murali Krishna

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 01-06-2015

Acts Referred:

Constitution of India, 1950 — Article 141, 162, 309, 311
Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Prevention of Corruption Act, 1988 — Section 13(1)(e), 13(2)

Citation : (2015) 6 ALD 694 : (2015) LabIC 3445

Hon'ble Judges : Ramesh Ranganathan, J; M. Satyanarayana Murthy, J

Bench : Division Bench

Advocate : B.S.N. Naidu, for the Appellant

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, J.—This Writ Petition is filed against the order passed by the A.P. Administrative Tribunal (for short the Tribunal) in O.A. No. 7241 of 2014 dated 26.02.2015. The Petitioner herein invoked the jurisdiction of the Tribunal questioning the action of the disciplinary authority in not taking steps, in the exercise of the enabling provisions under Rule 8(2)(5)(a) and (c) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, as illegal and arbitrary. By way of consequential relief he sought for a direction to the respondents to revoke his suspension, and to reinstate him to duty.

2. In its order, in O.A. No. 7241 of 2014 dated 26.02.2015, the Tribunal noted that a charge sheet had not yet been filed in the criminal case registered against the petitioner; Rule 8(5)(a) provided that the order of suspension, made by the competent authority, shall continue to remain in force unless and until it is modified or revoked by the authority; Rule 8(5)(c) stipulated that the competent authority may, at any time, modify or revoke the suspension order; the State Rules did not mandate the competent authority, who placed the petitioner under suspension, to review or revoke the suspension order soon after the material

witnesses were examined; the State Government had issued executive instructions which required the Disciplinary Authority to review the cases of suspension after every six months; the petitioners contention that the action of the 2nd respondent, in not revoking his suspension, was against statutory provisions was incorrect and invalid; it was clear from the averments and pleadings, in the counter filed by the respondents, that the criminal charge, under investigation, was connected with the petitioners official position as a government servant, and it involved moral turpitude; the continuation of the petitioner under suspension was fully justified and warranted; and the 2nd respondent was at liberty to review the petitioners suspension as per Rules, and the executive instructions issued by the Government in this regard. Aggrieved by the aforesaid order of the Tribunal, the petitioner has filed the present Writ Petition.

3. Facts, to the extent relevant, are that the petitioner was initially appointed as an Assistant Motor Vehicles Inspector in the year 1994. He was subsequently promoted to the post of Motor Vehicles Inspector. After obtaining permission from the Joint Director (Andhra) ACB, Hyderabad, vide proceeding No. 7/ACB-JD(A)/RCA-2014 dated 12.06.2014 for registering a case and to conduct investigation, the Anti Corruption Bureau conducted a search at the petitioners office, residence and certain other places on 18.06.2014. An inventory was made on 18.06.2014 at 11.30 hours. On the ground that there was credible information, that he was in possession of assets disproportionate to his known sources of income, FIR No. 11/RCA-EWG/2014 was registered against the petitioner at ACB Range police station, Eluru on 16.06.2014 for offences punishable under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988. The petitioner was arrested on 17.07.2014, and was produced before the Special Judge for SPE and ACB Cases. He was remanded to judicial custody on the same day. Thereafter, on the ground that he was in judicial custody for more than 48 hours, the 2nd respondent, vide proceedings dated 04.08.2014, placed the petitioner under suspension with effect from 17.07.2014. The petitioner filed Criminal Petition No. 9880 of 2014 before this Court and, by order dated 27.11.2014, bail was granted to him on certain conditions. The validity of the proceedings of the 2nd respondent dated 04.08.2014 was questioned before the Tribunal wherein the petitioner contended that, on facts, the assets found were not disproportionate to his known sources of income; and the order placing him under suspension was illegal. It is for the first time before this Court has it been contended that the order of suspension necessitates revocation as the Supreme Court, in *Ajay Kumar Choudhary v. Union of India* CDJ 215 SC 129 (Judgment of the Supreme Court in Civil Appeal No.1912 of 2015 (arising out of SLP) No. 31761 of 2013 dated 16.02.2015), had held that suspension cannot be continued beyond 90 days if no charge sheet is filed in the criminal case, or if no charges are framed in the disciplinary proceedings by then.

4. In the counter-affidavit, filed on behalf of the 2nd respondent, it is stated that

the ACB officials, vide Radio Message dated 19.06.2014, had informed that there was credible information to show that the petitioner was in possession of assets disproportionate to his known sources of income; a case was registered in Cr. No. 11/RCA-EWG/2014 on 18.06.2014 under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act; simultaneous searches were conducted on 18.06.2014 at the office premises, the petitioners residence and certain other places; the ACB officials, by their Radio Message dated 17.07.2014, had informed that the petitioner was arrested at his residence on 17.07.2014, and was produced before the Special Judge for SPE and ACB Cases, Vijayawada on the same day, and he was remanded to judicial custody upto 31.07.2014; since the petitioner was under judicial custody for more than 48 hours he was deemed to have been placed under suspension, with effect from the date of his detention, under Rule 8(2) of the A.P.C.S. (CC&A) Rules, 1991; accordingly he was placed under suspension by proceedings dated 04.08.2014 with effect from 17.07.2014 (the date on which he was arrested); continuation of an employee in service, even after a criminal case is registered by the ACB officials, would neither be in public interest nor in the interest of administration; the order of suspension is not as a measure of punishment; placing the government servant under suspension is to ensure that he is kept away from duty till the investigation/enquiry is completed; the offence is grave in nature, and it involves moral turpitude; the ACB is still carrying out investigation; as the case is still under investigation, it would not be proper for the suspension order to be revoked; the petitioners suspension was reviewed on 26.06.2015 by the Government; it was opined, vide memo dated 02.04.2014, that he should be continued under suspension; and it was fair that he should continue to remain under suspension until further review.

5. Suspension means the action of debarring, for the time being, from a function or privilege or temporary deprivation of working in the office. (*Union of India v. Ashok Kumar Aggarwal* (2013) 16 SCC 147). Suspension, according to the Oxford Dictionary, means the action of suspending or condition of being suspended; the action of debarring or state of being debarred, especially for a time, from a function or privilege; temporary deprivation of ones office or position. One of the meaning of the word suspension as given in Chambers 20th dictionary is: to defer, to debar from any privilege, office, emolument etc., for a time. Suspension is, ordinarily, a temporary act. (*Dr. G. Thimma Reddy v. State of Andhra*; *Govt. of India, Ministry of Home Affairs v. Tarak Nath Ghosh*; *Halsbury's Laws of England, Third Edn., Vol. 25, Article 989, p. 518.*).

6. Three kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during the pendency of an enquiry against him if the order appointing him, or the statutory provisions governing his service, provide for such suspension. Lastly he may merely be forbidden from discharging his duties during the pendency of an enquiry against him which act is also called suspension. The right to suspend as a measure of punishment as well as the right to suspend the contract of service

during the pendency of an enquiry are both regulated by the contract of employment or the statutory provisions regulating the conditions of service. But the last category of suspension is the right of the master to forbid his servant from doing the work which he had to do under the terms of the contract of service or the provisions governing his conditions of service at the same time keeping in force the masters obligations under the contract. In other words the master may ask his servant to refrain from rendering his service but he must fulfil his part of the contract. (V.P. Gidroniya v. State of M.P.; B.R. Patel v. State of Maharashtra; and R.P. Kapur v. Union of India). So far as suspension as a punishment is concerned, it is a disciplinary matter. (R.P. Kapur Vs. Union of India (UOI) and Another, AIR 1964 SC 787 : (1966) 2 LLJ 164 : (1964) 5 SCR 431 .

7. Suspension, in the present case, is not a substantive punishment, and is an interim order pending enquiry/criminal proceedings. (Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan). Suspension of this kind is not a punishment but only forbids or disables the petitioner from discharging the duties of his office or the post held by him. In other words it is to restrain him from availing further opportunities of perpetrating the alleged misconduct or to remove the impression among members of the service that dereliction of duty would pay and the offending employee can get away 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 affording the delinquent the opportunity in office to impede the progress of the investigation or inquiry etc. (State of Orissa v. Bhimal Kumar Mohanty).

8. Clause (1) of Article 311 of the Constitution of India has no application to a situation where a government servant has been merely placed under suspension pending departmental enquiry since such action does not constitute either dismissal or removal from service. (State of Orissa v. Shiva Parashad Das; and Mohammad Ghouse v. State of Andhra). In certain cases, suspension may cause stigma, even after exoneration in the departmental proceedings or acquittal by the criminal court, but it cannot, in the strict legal sense and by any stretch of imagination, be treated as a punishment. (Ashok Kumar Aggarwal (2013) 16 SCC 147; O.P. Gupta v. Union of India; and Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.).

9. An order of interim suspension can be passed against the employee while an inquiry/investigation is pending against him. Suspending an officer, and thereby disabling him from performing the duties of his office on the basis that the contract is subsisting, is always an implied term in every contract of service. When an officer is suspended in this sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as issuing an order to the employee which, because the contract is subsisting, the employee

must obey. (Balvantrai Ratilal Patel v. State of Maharashtra; T. Cajee v. U. Jormanik Siem; R.P. Kapur Vs. Union of India (UOI) and Another, AIR 1964 SC 787 : (1966) 2 LLJ 164 : (1964) 5 SCR 431 ; State of Orissa Vs. Bimal Kumar Mohanty, AIR 1994 SC 2296 : (1994) 68 FLR 970 : (1994) 2 JT 51 : (1995) 1 LLJ 568 : (1994) 1 SCALE 685 : (1994) 4 SCC 126 : (1994) 2 SCR 51 : (1994) 2 SLJ 72 : (1994) 1 UJ 665 ; V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, AIR 1970 SC 1494 : (1971) 21 FLR 251 : (1970) LabIC 1332 : (1970) 2 LLJ 143 : (1970) 1 SCC 362 : (1970) 3 SCR 448 ; Jammu University v. D.K. Rampal). Where the power to suspend is provided for either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay his full salary and allowances. (B.R. Patel⁶; Hanley v. Pease and Partners, Ltd.; Wallwork v. Fielding and Boston Deep Sea Fishing and Ice Co. v. Ansell).

10. If the order of suspension is a valid order, it has suspended the contract of service and the government servant is entitled to receive only such subsistence allowance as might be payable under the rules and regulations governing his terms and conditions of service. (Jammu University¹⁶). As an employer can suspend an employee pending an inquiry into his conduct, the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is a provision in the Rules providing for the scale of payment during suspension, the payment would be in accordance therewith. On general principles, therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental inquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental inquiry against him. (R.P. Kapur Vs. Union of India (UOI) and Another, AIR 1964 SC 787 : (1966) 2 LLJ 164 : (1964) 5 SCR 431 ; V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, AIR 1970 SC 1494 : (1971) 21 FLR 251 : (1970) LabIC 1332 : (1970) 2 LLJ 143 : (1970) 1 SCC 362 : (1970) 3 SCR 448 ; T. Cajee Vs. U. Jormanik Siem and Another, AIR 1961 SC 276 : (1961) 2 FLR 304 : (1961) 1 LLJ 652 : (1961) 1 SCR 750 ; and Balvantray Ratilal Patel Vs. The State of Maharashtra, AIR 1968 SC 800 : (1968) 17 FLR 445 : (1968) LabIC 984 : (1968) 2 LLJ 700 : (1968) 2 SCR 577 ; The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh, AIR 1971 SC 823 : (1971) LabIC 487 : (1971) 1 LLJ 299 : (1971) 1 SCC 734 : (1971) 3 SCR 715 ; State of Orissa Vs. Bimal Kumar Mohanty, AIR 1994 SC 2296 : (1994) 68 FLR 970 : (1994) 2 JT 51 : (1995) 1 LLJ 568 : (1994) 1 SCALE 685 : (1994) 4 SCC 126 : (1994) 2 SCR 51 : (1994) 2 SLJ 72 : (1994) 1 UJ 665) .

11. An order of suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority should also keep in mind the public interest of the impact of the delinquents continuance in office while facing departmental inquiry or trial of a criminal charge. (Ashok Kumar Aggarwal (2013) 16 SCC 147 ; State of Orissa Vs. Bimal Kumar Mohanty, AIR 1994 SC

2296 : (1994) 68 FLR 970 : (1994) 2 JT 51 : (1995) 1 LLJ 568 : (1994) 1 SCALE 685 : (1994) 4 SCC 126 : (1994) 2 SCR 51 : (1994) 2 SLJ 72 : (1994) 1 UJ 665 ; R.P. Kapur Vs. Union of India (UOI) and Another, AIR 1964 SC 787 : (1966) 2 LLJ 164 : (1964) 5 SCR 431 ; and Balvantray Ratilal Patel Vs. The State of Maharashtra, AIR 1968 SC 800 : (1968) 17 FLR 445 : (1968) LabIC 984 : (1968) 2 LLJ 700 : (1968) 2 SCR 577 . The importance and necessity of proper disciplinary action being taken against government servants for inefficiency, dishonesty or other suitable reasons, cannot be over emphasised. While such action may be against the immediate interest of the government servant, yet it is absolutely necessary in the interests of the general public for serving whose interests the government machinery exists and functions. Suspension of a government servant pending an enquiry is a necessary part of the procedure for taking disciplinary action against him. (Khem Chand v. Union of India).

12. Ordinarily, a government servant is placed under suspension to restrain him from availing the further opportunity to perpetrate the alleged misconduct or to scuttle the inquiry or investigation or to win over the witnesses or to impede the progress of the investigation or inquiry, etc. It would also remove the impression, among members of the service, that dereliction of duty would pay. (Ashok Kumar Aggarwal (2013) 16 SCC 147 State of Orissa Vs. Bimal Kumar Mohanty, AIR 1994 SC 2296 : (1994) 68 FLR 970 : (1994) 2 JT 51 : (1995) 1 LLJ 568 : (1994) 1 SCALE 685 : (1994) 4 SCC 126 : (1994) 2 SCR 51 : (1994) 2 SLJ 72 : (1994) 1 UJ 665) . When serious allegations of misconduct are imputed against a member of a service, normally it would not be desirable to allow him to continue in the post where he is functioning. The government may rightly take the view that an officer, against whom serious imputations 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. (The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh, AIR 1971 SC 823 : (1971) LabIC 487 : (1971) 1 LLJ 299 : (1971) 1 SCC 734 : (1971) 3 SCR 715) . The purpose of suspension is generally to facilitate a departmental enquiry and to ensure that, while such enquiry is going on-it may relate to serious lapses on the part of a public servant-, he is not in a position to misuse his authority in the same way in which he might have been charged to have done so in the enquiry. (R.P. Kapur Vs. Union of India (UOI) and Another, AIR 1964 SC 787 : (1966) 2 LLJ 164 : (1964) 5 SCR 431 .

13. The effect on public interest, due to the employees continuation in office, is also a relevant and determining factor. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. At this stage, it is not desirable for the court to find out as to which version is true when there are claims and counterclaims on factual issues. (Ashok Kumar Aggarwal (2013) 16 SCC 147) . No conclusion can be arrived at without examining the entire record. It is always advisable to

allow disciplinary proceedings to continue unhindered, and the concerned employee kept out of the mischiefs range. If he is exonerated, he would then be entitled to all the benefits from the date of the order of suspension. (U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan, (1993) 2 JT 550 : (1993) 2 LLJ 958 : (1993) 2 SCALE 330 : (1993) 3 SCC 483 Supp : (1994) 1 SLJ 28 ; State of Orissa Vs. Bimal Kumar Mohanty, AIR 1994 SC 2296 : (1994) 68 FLR 970 : (1994) 2 JT 51 : (1995) 1 LLJ 568 : (1994) 1 SCALE 685 : (1994) 4 SCC 126 : (1994) 2 SCR 51 : (1994) 2 SLJ 72 : (1994) 1 UJ 665) . The usual ground for suspension, pending a criminal proceeding, is that the charge is connected with his position as a government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. In such a case a public servant may be suspended pending investigation, enquiry or trial relating to a criminal charge. (R.P. Kapur Vs. Union of India (UOI) and Another, AIR 1964 SC 787 : (1966) 2 LLJ 164 : (1964) 5 SCR 431 .

14. The power of suspension should, however, not be exercised in an arbitrary manner and without any reasonable ground or as a vindictive misuse of power. A suspension order cannot be actuated by mala fides, arbitrariness, or be passed for an ulterior purpose. (Ashok Kumar Aggarwal (2013) 16 SCC 147). An order of suspension should not be passed in a perfunctory or in a routine and casual manner but with due care and caution after taking all factors into account. (Ashok Kumar Aggarwal (2013) 16 SCC 147). It should be made after consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The authority should also take into account all available material as to whether, in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry. (Ashok Kumar Aggarwal (2013) 16 SCC 147). Ordinarily, an order of suspension is 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 it, on application of mind by the disciplinary authority. (Ashok Kumar Aggarwal (2013) 16 SCC 147 ; State of Orissa Vs. Bimal Kumar Mohanty, AIR 1994 SC 2296 : (1994) 68 FLR 970 : (1994) 2 JT 51 : (1995) 1 LLJ 568 : (1994) 1 SCALE 685 : (1994) 4 SCC 126 : (1994) 2 SCR 51 : (1994) 2 SLJ 72 : (1994) 1 UJ 665) .

15. Whether the employee should or should not continue in office during the period of inquiry is a matter to be assessed by the concerned authority. Ordinarily, the Court should not interfere with orders of suspension unless they are passed mala fide and without there being even prima facie evidence on record connecting the employee with the misconduct in question. (U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan, (1993) 2 JT 550 : (1993) 2 LLJ 958 : (1993) 2 SCALE 330 : (1993) 3 SCC 483 Supp : (1994) 1 SLJ 28 . The court cannot act as if it is an appellate forum de hors the power of judicial review. (Ashok Kumar Aggarwal (2013) 16 SCC 147). The Court or the Tribunal must consider each case on its own facts and no general law or formula of universal application can be laid down in this regard. (Ashok Kumar Aggarwal

(2013) 16 SCC 147 ; Bimal Kumar Mohanty⁹). 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. The authority should also keep in mind the public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge. (State of Orissa Vs. Bimal Kumar Mohanty, AIR 1994 SC 2296 : (1994) 68 FLR 970 : (1994) 2 JT 51 : (1995) 1 LLJ 568 : (1994) 1 SCALE 685 : (1994) 4 SCC 126 : (1994) 2 SCR 51 : (1994) 2 SLJ 72 : (1994) 1 UJ 665) .

16. Bearing these principles in mind, let us now examine the submission of Sri M.S. Prasad, Learned Senior Counsel appearing on behalf of the petitioner, that in view of the law declared by the Supreme Court in Ajay Kumar Choudhary CDJ 215 SC 129 (Judgment of the Supreme Court in Civil Appeal No.1912 of 2015 (arising out of SLP) No. 31761 of 2013 dated 16.02.2015), and since neither a charge memo was issued to the petitioner nor a charge sheet filed in the criminal case within 90 days of his being placed under suspension, the order of suspension stands automatically revoked. Before doing so, it is necessary to refer to the relevant rules and executive instructions governing suspension of a government servant pending disciplinary enquiry/criminal proceedings. Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter called the 1965 Rules) relates to suspension. Rule 10(2)(a) stipulates that a Government servant shall be deemed to have been placed under suspension by an order of the appointing authority (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. Rule 10(5)(a) stipulates that, subject to the provisions contained in sub-rule (7), an order of suspension made or deemed to have been made under Rule 10 shall continue to remain in force until it is modified or revoked by the authority competent to do so. Rule 10(5)(c) provides that an order of suspension made or deemed to have been made under Rule 10 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. Rule 10(6) requires an order of suspension, made or deemed to have been made under Rule 10, to be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time. Rule 10(7) stipulates that an order of suspension made or deemed to have been made under sub-rules (1) or (2) of Rule 10 shall not be valid after a period of ninety days unless it is extended, after review, for a further period before the expiry of ninety days. Under the proviso thereto, no such review of suspension shall be necessary, in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under

suspension at the time of completion of ninety days of suspension and the ninety days period, in such a case, will count from the date the Government servant, detained in custody, is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later.

17. Rule 8, of the Andhra Pradesh Civil Services (Classification, Control, and Appeal) Rules, 1991 (hereinafter called the State Rules) relates to suspension. Rule 8(2)(a) stipulates that a Government servant shall be deemed to have been placed under suspension, by an order of the authority competent to place him under suspension, 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. Rule 8(2)(c) stipulates that the order of suspension shall 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. Rule 8(5) (a) provides that an order of suspension, made or deemed to have been made under Rule 8, 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. Under Rule 8(5)(c), an order of suspension made or deemed to have been made under Rule 8 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.

18. Where there is power to suspend under a statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant. (Balvantray Ratilal Patel Vs. The State of Maharashtra, AIR 1968 SC 800 : (1968) 17 FLR 445 : (1968) LabIC 984 : (1968) 2 LLJ 700 : (1968) 2 SCR 577 State of Orissa Vs. Bimal Kumar Mohanty, AIR 1994 SC 2296 : (1994) 68 FLR 970 : (1994) 2 JT 51 : (1995) 1 LLJ 568 : (1994) 1 SCALE 685 : (1994) 4 SCC 126 : (1994) 2 SCR 51 : (1994) 2 SLJ 72 : (1994) 1 UJ 665) . In the present case, the order of suspension was passed in the exercise of the power vested by Rule 8(2)(a) of the State Rules. The concerned authority was well within its statutory power to keep the respondent under suspension. (Union of India v. Sunil Kumar Sarkar). Rule 8 of the State Rules is similar to Rule 10 of the 1965 Rules except that, while the former does not provide for a periodic review of the order of suspension, the latter does. Rule 10(6) requires the order of suspension to be reviewed within 90 days, and for the order of suspension not to exceed 180 days at a time. In Ashok Kumar Aggarwal (2013) 16 SCC 147 the Supreme Court held that the 1965 Rules are a self-contained code, and the order of suspension should be examined in the light of the statutory provisions to determine whether the suspension order was justified. As the State rules are also a self-contained code, the impugned order of suspension must be examined in the light of the said Rules. It is the exigency of the conditions of service which requires or calls for an order of suspension and there can be no difference in regard to this matter as between a member of an All India Service and a member of a State Service. (The Government of India,

Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh, AIR 1971 SC 823 : (1971) LabIC 487 : (1971) 1 LLJ 299 : (1971) 1 SCC 734 : (1971) 3 SCR 715) .

19. The legal fiction, created by Rule 8(2)(a) of the State Rules, requires a government servant to be deemed to have been placed under suspension from the date of his detention, if he is detained in custody for a period exceeding 48 hours. The moment a government servant is arrested, and is detained in custody for a period exceeding 48 hours, he is legally presumed to have been placed under suspension. Suspension, in such a case, is automatic. The government servant continues under suspension till the order of suspension ceases to operate, as prescribed under Rule 8(2)(c), when the criminal proceedings, on the basis of which the government servant was arrested, are terminated. Rule 8(2)(c) provides for the continuance of the deemed suspension, under Rule 8(2)(a), till completion of the criminal proceedings. Rule 8(5)(a) stipulates that the order of suspension shall continue to be in force till it is modified by the competent authority and Rule 8(5)(c) confers power on the competent authority to modify or revoke the order of suspension. Unless the order of suspension is modified or revoked by the competent authority, exercising power under Rule 8(5), a Government servant continues to remain under suspension till completion of the criminal proceedings.

20. Unlike the 1965 Rules, the State Rules do not specifically prescribe the mode and manner in which the competent authority may modify or revoke the order of suspension. It is, however, settled law that conditions of service can be prescribed either in the executive power of the State or its legislative power under the proviso to Article 309 of the Constitution. Such rules/executive instructions must, however, be reasonable and fair, and not grossly unjust. The delinquent officer, when placed under suspension, is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognised, it would imply that the executive is vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration. (O.P. Gupta Vs. Union of India (UOI) and Others, AIR 1987 SC 2257 : (1987) 3 JT 532 : (1988) 1 LLJ 453 : (1987) 2 SCALE 457 : (1987) 4 SCC 328 : (1988) 1 SCR 27 : (1988) 1 SLJ 121 ; Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni).

21. Though the State Rules are silent regarding the duration of suspension of a government servant, executive instructions have been issued by the Government in this regard which in the absence of any legislation either plenary or subordinate are required to be followed. If there is a statutory rule, or an Act in the matter, the executive must abide by that Act or Rule and it cannot, in exercise of the executive power under Article 162 of the Constitution, ignore or act contrary to that Rule or Act. (B.N. Nagarajan v. State of Mysore). It is, however, not necessary that there must be a law already in existence before the executive is enabled to function, and the powers of the executive are not limited

merely to the carrying out of these laws. There is nothing in Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law. The State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power, to make laws. (B.N. Nagarajan and Others Vs. State of Mysore and Others, AIR 1966 SC 1942 : (1967) 15 FLR 332 : (1967) 1 LLJ 698 : (1966) 3 SCR 682 ; Ram Jawaya Kapur v. State of Punjab). Where no statutory rules are made, regulating the conditions of service, the State Government can always, in the exercise of its executive power, issue administrative instructions laying down conditions of service. (Amarjit Singh Ahluwalia (Dr) v. State of Punjab; B.N. Nagarajan and Others Vs. State of Mysore and Others, AIR 1966 SC 1942 : (1967) 15 FLR 332 : (1967) 1 LLJ 698 : (1966) 3 SCR 682 ; and Sant Ram Sharma v. State of Rajasthan). While the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. (Sant Ram Sharma Vs. State of Rajasthan and Another, AIR 1967 SC 1910 : (1968) 2 LLJ 830 : (1968) 1 SCR 111 .

22. In the exercise of its executive power under Article 162 of the Constitution of India the Government, vide G.O.Ms. No. 86 General Administration (Ser.C) Department dated 08.03.1994, directed that the order of suspension against a government servant should be reviewed at the end of every six months; the appropriate reviewing authority should take a decision regarding continuance or otherwise of the employee concerned under suspension, with reference to the nature of charges, where delay in finalisation of the enquiry proceedings cannot be attributed to the employee or when there is no interference from the employee in facilitating the enquiry; an outer limit be provided, as two years from the date of suspension, failing which the public servant should be reinstated without prejudice to the proceedings being pursued; however, in exceptional cases, considering the gravity of the charges, one could be continued under suspension even beyond a period of two years, especially in cases where there is deliberate delay caused due to non-cooperation of the employee concerned; the concerned Principal Secretary/Secretary of the department should review suspension, in cases of their department, at an interval of six months with the representative of the Anti-Corruption Bureau, if the proceedings arose out of the investigation conducted by the Anti-Corruption Bureau; and they should make suitable recommendations as to the desirability or otherwise of further continuance of the officers under suspension. The executive instructions issued in G.O.Ms. No. 86 dated 08.03.1994 were, more or less, reiterated in the subsequent instructions issued in G.O.Ms. No. 526 dated 19.08.2008.

23. After exercising its powers to review the order of suspension, in terms of G.O.Ms. No. 86 dated 08.03.1994 and G.O.Ms. No. 526 dated 19.08.2008, the government, vide Memo No. 9710/Vig-Tr/1/2014 dated 02.04.2015, informed the Transport Commissioner and the Director General, Anti-Corruption Bureau,

that suspension of the petitioner was reviewed in its meeting held on 26.02.2015; in the review meeting the Joint Director, Anti-Corruption Bureau had mentioned that the case was under active investigation, and required three months time for its completion; and, therefore, it was decided to review the case again after three months. The government ordered that the respondent should be continued under suspension until further review.

24. The submission urged on behalf of the respondents that the consequence of the judgment of the Supreme Court, in Ajay Kumar Choudhary CDJ 215 SC 129 (Judgment of the Supreme Court in Civil Appeal No.1912 of 2015 (arising out of SLP) No. 31761 of 2013 dated 16.02.2015), is that Rule 10(6) of the 1965 Rules and Rule 8(5) of the State Rules and the executive instructions issued in this regard have been rendered redundant, is not unfounded. As the law declared by the Supreme Court is binding on the High Court, it would be inappropriate to say anything more.

25. The Supreme Court, in Ajay Kumar Choudhary CDJ 215 SC 129 (Judgment of the Supreme Court in Civil Appeal No.1912 of 2015 (arising out of SLP) No. 31761 of 2013 dated 16.02.2015), drew a distinction between cases where a charge sheet is filed within 90 days of the order of suspension and cases where it is not. The latter has been held to result in putting to an end the order of suspension, while the former has been held to require a reasoned order, extending the period of suspension, to be passed by the Government. However, in Tarak Nath Ghosh⁴, the Supreme Court held that, 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, the Government is of opinion that it would not be proper to allow the officer concerned to function in the ordinary way. Again, in Ashok Kumar Aggarwal (2013) 16 SCC 147, the Supreme Court held that the delinquent cannot be considered to be any better off after the charge-sheet has been filed against him in the Court on conclusion of the investigation than his position during the investigation of the case itself.

26. After referring to the earlier Judgments in O.P. Gupta Vs. Union of India (UOI) and Others, AIR 1987 SC 2257 : (1987) 3 JT 532 : (1988) 1 LLJ 453 : (1987) 2 SCALE 457 : (1987) 4 SCC 328 : (1988) 1 SCR 27 : (1988) 1 SLJ 121 , where it was held that suspension of an employee was injurious to his interests and must not be continued for an unreasonably long period and, therefore, an order of suspension should not be lightly passed; to K. Sukhendar Reddy v. State of A.P. which castigated selective suspension perpetuated indefinitely in circumstances where other persons involved had not been subjected to any scrutiny; and State of A.P. v. N. Radhakishan wherein it was observed that it would be fair to make the assumption of prejudice if there was unexplained delay in the conclusion of proceedings; the Supreme Court, in Ajay Kumar Choudhary CDJ 215 SC 129 (Judgment of the Supreme Court in Civil Appeal No.1912 of

2015 (arising out of SLP) No. 31761 of 2013 dated 16.02.2015) (Judgment of the Supreme Court in Civil Appeal No. 1912 of 2015 (arising out of SLP) No. 31761 of 2013 dated 16.02.2015), observed:--

"Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay."

Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement.

It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in *Raghubir Singh and Others Vs. State of Bihar*, AIR 1987 SC 149 : (1987) CriLJ 157 : (1986) 2 SCALE 452 : (1986) 4 SCC 481 : (1986) 3 SCR 802 , and more so of the Constitution Bench in *Antulay*, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the

Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.

(emphasis supplied)."

27. As reliance was placed by the Supreme Court, in *Ajay Kumar Choudhary* CDJ 215 SC 129 (Judgment of the Supreme Court in Civil Appeal No.1912 of 2015 (arising out of SLP) No. 31761 of 2013 dated 16.02.2015), on the earlier decision in *O.P. Gupta*¹², it is necessary to take note of the law declared therein. In *O.P. Gupta*¹², the Supreme Court held that there is no presumption that the Government always acts in a manner which is just and fair; there was no occasion to protract the departmental inquiry for a period of 20 years, and keeping the appellant under suspension for a period of nearly 11 years, unless it was actuated with the mala fide intention of subjecting him to harassment; while the charge framed against the appellant was serious enough to merit his dismissal from service, the departmental authorities were not in a position to substantiate the charge; but that was no reason for keeping the departmental proceedings alive for a period of 20 years and not to have revoked the order of suspension for over 11 years; an order of suspension of a government servant does not put an end to his service under the Government; and he continues to be a member of the service inspite of the order of suspension.

28. Unlike in *O.P. Gupta*¹² where the government servant was kept under suspension for more than eleven years, in the case on hand the petitioner was placed under suspension on 04.08.2014 less than eleven months ago. Long period of suspension does not make the order of suspension invalid. (*Ashok Kumar Aggarwal* (2013) 16 SCC 147). Ordinarily, when serious imputations are made against the conduct of an officer, the disciplinary authority cannot immediately draw up the charges. Considerable time may elapse between receipt of imputations against an officer and a definite conclusion by a superior authority that the circumstances are such that definite charges can be levelled 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. (Tarak Nath Ghosh⁴). It is possible that, in some cases, the authorities do not proceed with the matter as expeditiously as they ought to, which results in prolongation of the sufferings of the delinquent employee. But the remedy in such cases is either to call for an explanation from the authorities in the matter and, if it is found unsatisfactory, to direct them to complete the inquiry within a stipulated period and to increase the suspension allowance adequately. The Court has to examine each case on its own facts and decide whether the delay in serving the charge-sheet and completing the inquiry is justified or not. (U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan, (1993) 2 JT 550 : (1993) 2 LLJ 958 : (1993) 2 SCALE 330 : (1993) 3 SCC 483 Supp : (1994) 1 SLJ 28 .

29. Even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review the order of suspension. While exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been, and it results in prolongation of suffering of the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for the delay in conclusion of the enquiry, direct it to complete the enquiry within a stipulated period. However mere delay, in conclusion of the enquiry or the trial, cannot be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and, ordinarily, the Court should not interfere with the order of suspension unless they are passed mala fide, and without there being even prima facie evidence on record connecting the employee with the misconduct in question. (Ashok Kumar Aggarwal (2013) 16 SCC 147 ; U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan, (1993) 2 JT 550 : (1993) 2 LLJ 958 : (1993) 2 SCALE 330 : (1993) 3 SCC 483 Supp : (1994) 1 SLJ 28 ; Secretary to Government, Prohibition and Excise Deptt. v. L. Srinivasan; and Allahabad Bank and Another Vs. Deepak Kumar Bhola, (1997) 3 JT 539 : (1997) 1 LLJ 854 : (1997) 2 SCALE 623 : (1997) 4 SCC 1 : (1997) 2 SCR 1055 : (1997) 1 UJ 761 .

30. On the question of the binding effect of the law declared by the two judge bench of the Supreme Court in Ajay Kumar Choudhary CDJ 215 SC 129 (Judgment of the Supreme Court in Civil Appeal No.1912 of 2015 (arising out of SLP) No. 31761 of 2013 dated 16.02.2015), it must be borne in mind that the doctrine of binding precedents has the merit of promoting certainty and

consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. (Central Board of Dawoodi Bohra Community v. State of Maharashtra; Union of India v. Raghubir Singh (dead) by L.Rs.). The law laid down by the Supreme Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength. A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, AIR 2005 SC 752 : (2005) 99 CLT 514 : (2005) 1 JT 97 : (2004) 10 SCALE 501 : (2005) 2 SCC 673 : (2005) SCC(L&S) 246 .

31. In Khem Chand Vs. Union of India (UOI), AIR 1963 SC 687 : (1963) 1 LLJ 665 : (1963) 1 SCR 229 Supp , the Constitution Bench of the Supreme Court held that suspension of a government servant pending enquiry is a necessary part of the procedure for taking disciplinary action against him; and such action is necessary in the interest of the general public for serving whose interests the government machinery exists and functions. In V.P. Gidroniya⁵, the Constitution bench of the Supreme Court held that suspending an employee from performing the duties of his office, is an implied term in every contract of employment; when an employee is suspended in this sense, it means that the employer merely issues a direction to him that he should not do the service required of him during a particular period; in other words, the employer is regarded as issuing an order to the employee, which, because the contract is subsisting, the employee must obey.

32. In R.P. Kapur Vs. Union of India (UOI) and Another, AIR 1964 SC 787 : (1966) 2 LLJ 164 : (1964) 5 SCR 431 , the Constitution Bench of the Supreme Court held that the public servant may be suspended pending investigation, enquiry or trial relating a criminal charge; if the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted; even in case of acquittal, disciplinary proceedings may follow where the acquittal is other than honourable; the usual practice is that where a public servant is being tried on a criminal charge, the Government postpones holding a departmental enquiry and awaits the result of the criminal trial and therefore suspension, during investigation, enquiry or trial relating to a criminal charge, is intimately related to disciplinary matters.

33. While taking note of the fact that the disciplinary proceedings may commence after completion of the criminal proceedings, the Constitution Bench in R.P. Kapur Vs. Union of India (UOI) and Another, AIR 1964 SC 787 : (1966) 2 LLJ 164 : (1964) 5 SCR 431 was of the view that suspension during investigation, enquiry or trial relating a criminal charge is intimately related to disciplinary matters. The fact that an order of suspension could continue during trial of a criminal charge, and even thereafter till completion of disciplinary proceedings, if any, initiated against the Government servant was recognised in

R.P. Kapur by the Constitution bench of the Supreme Court. None of the aforesaid Constitution bench judgments of the Supreme Court in *Khem Chand Vs. Union of India* (UOI), AIR 1963 SC 687 : (1963) 1 LLJ 665 : (1963) 1 SCR 229 Supp , *V.P. Gidroniya Vs. The State of Madhya Pradesh and Another*, AIR 1970 SC 1494 : (1971) 21 FLR 251 : (1970) LabIC 1332 : (1970) 2 LLJ 143 : (1970) 1 SCC 362 : (1970) 3 SCR 448 , and *R.P. Kapur Vs. Union of India* (UOI) and *Another*, AIR 1964 SC 787 : (1966) 2 LLJ 164 : (1964) 5 SCR 431 were noticed in the latter two bench judgment of the Supreme Court in *Ajay Kumar Choudhary* CDJ 215 SC 129 (Judgment of the Supreme Court in Civil Appeal No.1912 of 2015 (arising out of SLP) No. 31761 of 2013 dated 16.02.2015) (Judgment of the Supreme Court in Civil Appeal No. 1912 of 2015 (arising out of SLP) No. 31761 of 2013 dated 16.02.2015).

34. All subsequent decisions by benches comprised of lesser number of Judges should be read in the light of the earlier Constitution Bench decisions. (*N. Meera Rani v. Govt. of T.N.*). In cases where a High Court finds any conflict between the views expressed by larger and smaller benches of the Supreme Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court, in such a case, is to try to find out and follow the opinion expressed by larger benches of the Supreme Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law, is followed by the Supreme Court itself. (*State of U.P. v. Ram Chandra Trivedi*; *Union of India (UOI) and Another Vs. K.S. Subramanian*, AIR 1976 SC 2433 : (1977) 1 LLJ 5 : (1976) 3 SCC 677 : (1977) 1 SCR 87 : (1976) 1 SLJ 539 : (1976) 8 UJ 717). The legal position is that, in the hierarchical set up of Courts, the High Court is bound by the decisions of the Supreme Court. However, when a smaller bench of the Supreme Court lays down a proposition contrary to and without noticing the ratio decidendi of the earlier larger Benches, such a decision will not become the law declared by the Supreme Court so as to have a binding effect under Article 141 of the Constitution on all the Courts within the country. (*Sakinala Harinath v. State of A.P.*). Judicial discipline requires that the opinion expressed by larger benches of the Supreme Court, in preference to those expressed by smaller benches of the Supreme Court, should be followed. (*Union of India (UOI) and Another Vs. K.S. Subramanian*, AIR 1976 SC 2433 : (1977) 1 LLJ 5 : (1976) 3 SCC 677 : (1977) 1 SCR 87 : (1976) 1 SLJ 539 : (1976) 8 UJ 717 ; *O. Ramachandra Reddi v. The Director, DRDL, Hyderabad*).

35. In *Ashok Kumar Aggarwal* (2013) 16 SCC 147 the Supreme Court held:--

"The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in *State of M.P. v. Shardul Singh* 1993 Supp (3) SCC 483, *P.V. Srinivasa Sastry v. Comptroller and Auditor General* (2001) 3 SCC 414, *ESI v. T. Abdul Razak* [1983] 1 SCR 828 : (1983) 1 SCC 124, *Kusheshwar Dubey v. Bharat Coking Coal Ltd.* (1966) 3 SCR 682 : AIR 1966 SC 1942, *Delhi Cloth and General Mills Ltd. v. Kushal Bhan* AIR

1955 SC 549, U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan (1975) 3 SCC 503 : AIR 1975 SC 984, State of Rajasthan v. B.K. Meena (1968) 1 SCR 111 : AIR 1967 SC 1910 , Prohibition and Excise Deptt. v. L. Srinivasan²⁸ and Allahabad Bank and Another Vs. Deepak Kumar Bhola, (1997) 3 JT 539 : (1997) 1 LLJ 854 : (1997) 2 SCALE 623 : (1997) 4 SCC 1 : (1997) 2 SCR 1055 : (1997) 1 UJ 761 , wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial cannot be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question....

(emphasis supplied)

36. In U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan, (1993) 2 JT 550 : (1993) 2 LLJ 958 : (1993) 2 SCALE 330 : (1993) 3 SCC 483 Supp : (1994) 1 SLJ 28 the respondent was suspended on May 3rd 1991. As the Learned Single Judge of the Allahabad High Court had revoked the order of suspension, which order was affirmed by the Division Bench, the appellant invoked the jurisdiction of the Supreme Court. It is in this context that the Supreme Court, in its order dated 29.03.1993, observed:

...In matters of this kind, it is advisable that the concerned employees are kept out of mischiefs range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension. Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily, the Court should not

interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question. In the present case, before the preliminary report was received, the Director was impressed by the first respondent-employees representation. However after the report, it was noticed that the employee could not be innocent. Since this is the conclusion arrived at by the management on the basis of the material in their possession, no conclusions to the contrary could be drawn by the Court at the interlocutory stage and without going through the entire evidence on record. In the circumstances, there was no justification for the High Court to revoke the order of suspension.

In Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, (1996) 2 AD 433 : (1996) 73 FLR 1247 : (1996) 3 JT 202 : (1996) 2 LLJ 245 : (1996) 2 SCALE 411 : (1996) 3 SCC 157 : (1996) 2 SCR 737 the respondent, while working as Assistant Section Officer, Home, Prohibition and Excise Department, was placed under suspension. Departmental inquiry was in process. Charge-sheet was laid for prosecution and the trial of the case was pending. The Tamil Nadu Administrative Tribunal set aside the departmental enquiry and quashed the suspension and the charge-sheet on the ground of delay in initiation of disciplinary proceedings. It is in this context that the Supreme Court held:

...In the nature of the charges, it would take a long time to detect embezzlement and fabrication of false records which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge levelled against the charged officer since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial.

Therefore, we desist from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum dehors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across such orders frequently putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied."

(emphasis supplied)

37. In Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, (1996) 2 AD 433 : (1996) 73 FLR 1247 : (1996) 3 JT 202 : (1996) 2 LLJ 245 : (1996) 2 SCALE 411 : (1996) 3 SCC 157 : (1996) 2 SCR 737 , the Supreme Court observed:--

"We are unable to agree with the contention of the learned counsel for the

respondent that there has been no application of mind or the objective consideration of the facts by the appellant before it passed the orders of suspension. As already observed, the very fact that the investigation was conducted by the CBI which resulted in the filing of a charge-sheet, alleging various offences having been committed by the respondent, was sufficient for the appellant to conclude that pending prosecution the respondent should be suspended. It would be indeed inconceivable that a bank should allow an employee to continue to remain on duty when he is facing serious charges of corruption and misappropriation of money. Allowing such an employee to remain in the seat would result in giving him further opportunity to indulge in the acts for which he was being prosecuted. Under the circumstances, it was the bounden duty of the appellant to have taken recourse to the provisions of clause 19.3 of the First Bipartite Settlement, 1966. The mere fact that nearly 10 years have elapsed since the charge-sheet was filed, can also be no ground for allowing the respondent to come back to duty on a sensitive post in the Bank, unless he is exonerated of the charge."

(emphasis supplied)

38. The attention of the Supreme Court in *Ajay Kumar Choudhary* CDJ 215 SC 129 (Judgment of the Supreme Court in Civil Appeal No.1912 of 2015 (arising out of SLP) No. 31761 of 2013 dated 16.02.2015), was not drawn to its earlier judgments in *Ashok Kumar Aggarwal* (2013) 16 SCC 147 ; *U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan*, (1993) 2 JT 550 : (1993) 2 LLJ 958 : (1993) 2 SCALE 330 : (1993) 3 SCC 483 Supp : (1994) 1 SLJ 28 ; *Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan*, (1996) 2 AD 433 : (1996) 73 FLR 1247 : (1996) 3 JT 202 : (1996) 2 LLJ 245 : (1996) 2 SCALE 411 : (1996) 3 SCC 157 : (1996) 2 SCR 737 ; and *Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan*, (1996) 2 AD 433 : (1996) 73 FLR 1247 : (1996) 3 JT 202 : (1996) 2 LLJ 245 : (1996) 2 SCALE 411 : (1996) 3 SCC 157 : (1996) 2 SCR 737 , wherein it was held that mere delay in conclusion of disciplinary proceedings or criminal cases or long period of suspension would not render the order of suspension invalid.

39. This Court may not, therefore, be justified in quashing the order of suspension following the judgment of the Supreme Court in *Ajay Kumar Choudhary* CDJ 215 SC 129 (Judgment of the Supreme Court in Civil Appeal No.1912 of 2015 (arising out of SLP) No. 31761 of 2013 dated 16.02.2015), as that would require it to ignore the Constitution bench judgments of the Supreme Court in *Khem Chand*²⁰, *R.P. Kapur*⁷ and *V.P. Girdroniya*⁵; as also the other judgments of the Supreme Court in *Ashok Kumar Aggarwal* (2013) 16 SCC 147 ; *U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan*, (1993) 2 JT 550 : (1993) 2 LLJ 958 : (1993) 2 SCALE 330 : (1993) 3 SCC 483 Supp : (1994) 1 SLJ 28 ; *Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan*, (1996) 2 AD 433 : (1996) 73 FLR 1247 : (1996) 3 JT 202 : (1996) 2 LLJ 245 : (1996) 2 SCALE 411 : (1996) 3 SCC 157 : (1996) 2 SCR

737 ; and Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, (1996) 2 AD 433 : (1996) 73 FLR 1247 : (1996) 3 JT 202 : (1996) 2 LLJ 245 : (1996) 2 SCALE 411 : (1996) 3 SCC 157 : (1996) 2 SCR 737 . The order of the Tribunal does not, therefore, necessitate interference.

40. However, as it was decided in the review meeting held by the Government on 26.02.2015 that the suspension would be reviewed after 3 months i.e. after 26.05.2015, the respondents are directed to review the order of suspension and communicate their decision to the petitioner at the earliest, in any event not later than one month from the date of receipt of a copy of this order. Subject to the aforesaid directions, the Writ Petition fails and is, accordingly, dismissed. However, in the circumstances, without costs. Miscellaneous Petitions, if any pending, shall also stand dismissed.