

(1988) 07 MAD CK 0016

In the Madras High Court

Case No : Writ Petition No. 5404 of 1988

D. Uthirakumaran

APPELLANT

Vs

Government of Tamil Nadu and Another

RESPONDENT

Date of Decision : 29-07-1988

Acts Referred:

All India Services (Discipline and Appeal) Rules, 1955 — Rule 3, 3(1), 7(1)
Constitution of India, 1950 — Article 14, 229, 235, 311, 371
Railway Protection Force Act, 1957 — Section 21
Railway Protection Force Rules, 1959 — Rule 17, 40(1)
Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1953 — Rule 17

Citation : (1990) 1 LLJ 205

Hon'ble Judges : S. Mohan, J;Padmini Jesudurai, J

Bench : Division Bench

Judgement

Mohan, J.—The petitioner is a direct recruit to the post of Deputy Collector-Category II, in the year 1978. He successfully completed his

probation on 1st January 1981. He was promoted as District Revenue Officer-Category I of the Tamil Nadu Civil Service. He was posted as Joint

Director of Stationery and Printing on 26th August 1986. He was sent on deputation to the Tamil Nadu Civil Supplies Corporation and posted as

Senior Regional Manager at Madras on 27th February, 1987. By proceedings dated 6th February, 1988, he was posted as District Revenue

Officer at Chengalpattu. He joined the same on 8th February, 1988. On 12th March, 1988, Mr. Sameer Vyas was posted as Collector of

Chengalpattu at Kancheepuram.

2. According to the petitioner, the said Collector, not being well acquainted with Tamil, seems to have misunderstood the petitioner which led to

some misunderstanding. While the matter stood thus, to the surprise and shock

of the petitioner, by G.O.Ms. No. 534, Public (Special-A)

Department dated 23rd March, 1988, he was placed under suspension. The suspension had been ordered under sub-rule(e) of R. 17 of the Tamil

Nadu Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as the "Rules"). The order of suspension reads as if an

enquiry into grave charges against the petitioner is contemplated and that it is necessary to place the petitioner under suspension from service in the

public interest. Till date, no charge has been framed; nor any enquiry has been initiated, nor even a charge memo has been served. The petitioner

understands that the respondents are fishing out for materials after placing the petitioner under suspension.

3. By letter dated 30th March, 1988, the petitioner requested the first respondent (the Chief Secretary to the Government of Tamil Nadu) to

disclose the reasons for suspension. This has been followed up by another letter dated 31st March, 1988 wherein the petitioner prayed for the

revocation of the order of suspension since according to him the suspension was wholly unjustified. The petitioner moved the Governor of Tamil

Nadu by way of a petition dated 6th April, 1988 and till date no reply has been received. Being aggrieved by the order of suspension dated 23rd

March, 1988, the present writ petition has been preferred for the following, among other, grounds :

(i) Under R. 17(e) of the Rules there could be suspension of a member of service only when an enquiry into grave charges against him is pending

or an enquiry into grave charges is contemplated. Till this date, no charge much less a grave charge or charges, have been formulated. Without

formulation of such charges, there cannot be a suspension as laid down in the judgment in W.P. No. 9733 of 1987. This decision has been

followed in various other cases. On the plain and unambiguous nature of Rule 17(e)(1)(i) of the Rules and on interpretation of the said Rule the

reference to charges in sub-rule (e)(i) of R. 17 after the sub-rule (b)(i) which speaks about the reduction of the grounds on which it is proposed to

take action to the form of a definite charge or charges, the expression ""charges"" occurring in sub-rule(e)(1)(i) of R. 17 must be given the same

connotation as given to charges in sub-rule (b)(i) of R. 17. It has been so laid down in the judgment in W.P. No. 7855 of 1987. Therefore, the

order of suspension is, prima facie, illegal.

(ii) The petitioner submits that there being no formulation of charges, much less grave charges, there could be no enquiry into a charge and,

therefore, the order is illegal. The attitude of the first respondent seems to be to place the petitioner under suspension, to fish out for materials and

thereafter to gather information and frame charges. Such a procedure is not warranted in law. It offends Art. 14 of the Constitution and is liable to

be quashed as laid down in the judgment in W.P. No. 11050 of 1986 dated 9th December, 1986.

(iii) Under R. 17(e)(1)(i) of the Rules, the 30 first respondent is enabled to place the petitioner under suspension only when the first respondent is

in possession of sufficient materials, whether after the preliminary investigation or otherwise, and the disciplinary proceedings had, in fact,

commenced and not merely when they are contemplated. The order of suspension before the actual initiation or commencement of the disciplinary

proceedings is totally outside the scope of the rules. It is the further case of the petitioner that the first respondent could invoke the power of

suspension only after framing or formulating a charge, that too, when suspension is necessitated in public interest. Unless a disciplinary proceedings

are initiated by the disciplinary authority on a mere contemplation of enquiry into alleged or so-called grave charges for which fishing expedition is

undertaken by the first respondent, the order of suspension is totally unwarranted and illegal.

(iv) The order of suspension is not a bona fide exercise of power and is vindictive since the request of the petitioner to change his Headquarters to

Madras where his wife is working, from Kancheepuram has been refused arbitrarily.

Under these circumstances, the petitioner prays for a writ of certiorari to call for the records relating to G.O.Ms. No. 534 Public (Special-A)

Department dated 23rd March, 1988 and to quash the same.

4. In the counter-affidavit filed by the Chief Secretary, the first respondent, the facts leading to the passing of the impugned order of suspension are

stated as follows :

(a) On 11th March, 1988 when the second respondent was attending to office work in his office at Saidapet, at about 6.15 P. M., the writ

petitioner entered his office and was discussing routine administrative matters. The writ petitioner seems to have made some general and vague reference to collection of amounts from the public by way of regular bribe. The writ petitioner had in no uncertain words offered to make a payment of Rs. 20,000/- per month to the second respondent and that he would ensure complete secrecy over the matter. The writ petitioner seems to have further assured the second respondent that he could be trusted in the matter. The second respondent was totally surprised about this bold statements of the writ petitioner and therefore he sent a letter in his own handwriting on 16th March, 1988 to the first respondent, summarising the conversation between the writ petitioner and himself that took place on 11th March, 1988. This letter of the second respondent was received by the first respondent on 21st March, 1988. The said letter of the second respondent was examined in all aspects and it was ultimately decided by the first respondent to place the writ petitioner under suspension under R. 17(e) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. The order of suspension states that an enquiry into grave charges against the writ petitioner is contemplated and that it is necessary in public interest to place the writ petitioner under suspension from the service. On 26th March, 1988 the Government have addressed a letter to the Director of Vigilance and Anti Corruption bringing to his notice the substance of the complaint of the second respondent and requesting him to make a detailed enquiry into the allegations and to unearth the illegal operations which are involved in the offer of bribery and bring to book all the guilty persons. On 4th April, 1988 the Director of Vigilance and Anti Corruption asked for the service particulars of the writ petitioner and the same was sent on 11th April, 1988. On 28th April, 1988 the Director of Vigilance and Anti-Corruption asked for a report of the second respondent and other relevant records to enable the Directorate to make a detailed enquiry. A copy of the Collector's report was sent to the Directorate of Vigilance and Anti-Corruption by the Government on 19th May, 1988.

(b) Since the order of suspension, investigation is in progress. As soon as all the details are collected, a comprehensive charge memo will be served. Though the letter of the Collector dated 16th March, 1988 can itself form the basis of a charge memo having regard to the wide

implications and the nature of the offer made by the writ petitioner, it was felt necessary to unearth all the conspirators in the case and frame a

comprehensive and a definite charge memo. It is precisely for this purpose that R. 17(e) provides for suspension where an enquiry into grave

charges is contemplated.

(c) The order of suspension need not disclose any reasons. R. 17(e) is as follows :

A member of a service may be placed under suspension from service, where

(i) an enquiry into grave charges against him is contemplated or is pending.

The word contemplated qualifies the word enquiry. In other words, when complaints are received against a Government servant and if the

authority thinks that such a complaint deserves an enquiry and, therefore, the authority contemplates the framing of charges and holding of an

enquiry a Government Servant can be suspended. The Courts have repeatedly found fault with the Government for delay in framing charges. But

rarely it has been held in the past that a Government servant cannot be placed under suspension unless the charges are framed. If such an

interpretation is to be adopted one part of R. 17(e) will become nugatory. It is submitted that whenever it is in the mind of the appropriate authority

that in due course a formal departmental enquiry shall be held or there exists a contingency for such an enquiry it will satisfy the requirement of

contemplation. The decision of this Court in W.P. No. 9733 of 1987 referred to in the affidavit of the petitioner is the subject-matter of an appeal

pending in this Court. On the other hand there are other decisions of this Court that even before actual framing of charges a Government Servant

can be placed under suspension in contemplation of an enquiry into grave charges-Vide (1985) LIC 51 : It is therefore submitted that the order of

suspension is neither illegal nor arbitrary.

(d) An order of suspension is not automatic in all cases where complaints are received against a Government Servant. It is only when the complaint

is considered to be prima facie true and the alleged charges are serious and an enquiry is contemplated, the authority concerned decides to place

the officer under suspension. For this purpose it is not necessary to frame the charges even at the time of suspension. The facts of this case itself

provides an excellent example. The very offer of the writ petitioner to pay a sum of Rs. 20,000/- to Rs. 25,000/- every month to the Collector is

an offence for which the writ petitioner can be punished if the allegation is proved. But the very nature of the offer discloses a well organised

scheme to make collections through the subordinate staff from members of the public and a long standing conspiracy between some of the officers

is also suspected. Therefore, it is necessary to make a thorough investigation and frame a comprehensive and definite charge memo and also bring

to book other persons who are likely to be involved in such conspiracy. It is, therefore, incorrect to say that there are no materials and that there

was no application of mind.

(e) The fact that before framing a comprehensive charge memo, a complete investigation is sought to be made, is no ground to invalidate the very

order of suspension. It is totally incorrect to say that the respondents are now trying to fish for materials to frame a charge memo. It is totally

incorrect to say that the respondents are trying to collect information from all the places where the petitioner worked in the past 10 years. As

already stated the concrete piece of information received on 21st March, 1988 is sought to be verified with definite facts and circumstances and

the evidence necessary to prove the charges. The complaint of the petitioner in ground "E" that an order has been passed to the effect that he will

not be entitled to subsistence allowance is incorrect and misleading. Under Fundamental Rule 53(3) no subsistence allowance shall be paid to a

Government Servant unless he resides in the place fixed by the Government.

5. A reply affidavit was filed in which the petitioner would state that he has a meritorious record of service. The official diary of the petitioner would

disclose not only the visits of the various dignitaries but also the arrangements made and the vital role played by the petitioner in making such

arrangements to make success of the visits of the V.I.Ps. and the V.V.I.Ps. a pleasant one.

6. There is absolutely no factual basis for the so-called letter or report of the 2nd respondent to the 1st respondent. On 11th March, 1988, the

petitioner attended the Land Revenue Collection and Revenue Meeting conducted by the Special Commissioner and Commissioner of Revenue

Administration at Ezhilagam, Chepauk, and returned to the Panagal Building. The District Collector as well as the petitioner have separate

chambers with telephone with STD facilities. On 10th March, 1988 at 4.00 P.M.,

the 2nd respondent conducted a meeting regarding the proposed Governor's visit to Chengalpattu. On 11th March 1988, the 2nd respondent came to Panagal Building and the petitioner was in the midst of his official work. When the petitioner called on him to discuss the official matters regarding the Governor's visit, the petitioner explained to him as to how the V.I.Ps. are normally attended to by Revenue Staff. This appears to have been thoroughly misunderstood by the 2nd respondent.

7. The petitioner submits that the order of suspension itself is to spoil the chances of further promotion of the petitioner. It is an indisputable matter of record that the petitioner was posted as District Revenue Officer, Chengalpattu on 8th February, 1988 forenoon. The second respondent joined as a District Collector on 2nd March 1988. In such a context the allegation that the petitioner tried to have intimate conversation with the second respondent cannot be believed. No sensible person would have ventured to have such a conversation as alleged, particularly having regard to the fact that he had no previous acquaintance with the second respondent. Likewise, there is absolutely no justification for the claim that there must have been some illegal operations.

8. To this a rejoinder was filed by the second respondent wherein it is stated as follows :-

(i) It is true that I had taken charge as Collector of Chengalpattu District on 2nd March 1988. It is also true that the petitioner joined duty as District Revenue Officer, Chengalpattu on 8th February, 1988. The allegation that I am not fully conversant with Tamil Language is not correct. I have picked up a good amount of conversational fluency in Tamil Language. I have also passed the necessary Tamil Language Test (Higher Standard). On 11th March 1988 I was attending office at Saidapet. At about 6.15 P.M. the writ petition entered my office.

I was discussing routine administrative matters especially in connection with the visit of His Excellency the Governor of Tamil Nadu to Kancheepuram. The writ petitioner was trying to impress upon me that I should trust him in all matters. Ultimately, he made an offer to guarantee a payment of Rs. 20,000/to Rs. 25,000/- every month as bribe. I was shocked to hear the writ petitioner coming out with such an open offer of bribery. On the 12th and 13th of March, 1988. I was busy in shifting my

residence from Madras to my headquarters at Kancheepuram. I had to arrange for the transport of all the luggages, furnitures etc. It my also be significant to note that 12th and 13th were holidays being Saturday and Sunday. 14th March, 1988 was "Grievances Day" in the Collector's office at Kancheepuram. I had to spend the whole day at the Collector's Office and was listening to the grievances of the public. In the afternoon on 14th March 1988, I had to visit Thriuppukuzhi, Baluchetty Chatram and Keezhambi in connection with the visit of the Governor. 15th March, 1988 was the day on which Bharath Bandh was observed by various labour unions. I had to be in the headquarters to assess the situation as well as to maintain law and order. The visit of the Governor scheduled to take place on 16th March, 1988 was postponed to 17th March 1988 because of the Bandh. On 16th March 1988 also I had to visit Muthialpettai, Kithiripettai, Thazhambedu, Panruti, Karasangal in connection with the Governor's visit and also attended a function at Kattupakkam organised by the Agriculture Department and the Agricultural University. In the evening at about 5.00 P.M. I had a meeting with the Adviser (S) to Governor and thereafter a meeting with the Chief Secretary. This was the first opportunity I got to meet the Chief Secretary after the writ petitioner met me on 11th March 1988. Therefore, I immediately disclosed as to what transpired in the meeting between the writ petitioner and myself on 11th March 1988. The Chief Secretary asked me to give it in writing. It is under this circumstance that I wrote a letter on 16th March 1988 itself in my own handwriting.

(ii) On 17th March 1988, His Excellency the Governor visited Kancheepuram and I had to accompany him throughout the visit of the District. On 18th March 1988, the Adviser to the Governor Thiru A. Padmanabhan visited Tiruttani and inspected various improvement schemes and also took part in the meeting of the officials. Therefore, I was throughout at Tiruttani on 18th March 1988. On Saturday, the 19th March, 1988 I had to inspect the helped which was being made ready for the arrival of the President of India. 20th March, 1988 being Sunday, I handed over the letter prepared by me on 16th March 1988 to the first respondent at his office on 21st March 1988. I respectfully submit that there was no undue delay in my writing the complaint and handing over the same to the first respondent.

In this connection I also submit that I wrote a letter in my own handwriting and I was very particular in delivering the letter myself to the first respondent because of the sensitive nature of the complaint.

(iii) It is submitted that it is not necessary to furnish a copy of the second respondent's letter dt. 16th March 1988 to the writ petitioner at this

stage. I emphatically deny that my letter dt. 16th March, 1988 was the result of an erroneous and wrong understanding of the conversation the

petitioner had with me on 11th March, 1988. I also emphatically deny that the conversation was in Tamil. The entire conversation was in English. I

once again deny that I cannot understand Tamil correctly or in the proper perspective. I also deny the allegation that on Public Grievances Days I

used to ask the writ petitioner to tell me the substance of what the public ask the Collector. I might have asked the writ petitioner as to whether the

complaints made by the public were true or whether they had been given redressal. It is also respectfully submitted that the petitioner is very vague

about the conversation between the petitioner and me that took place on 11th March 1988. He entered my office and made the offer of bribe as

stated already. In fact, in the counter-affidavit in Writ Miscellaneous Petition No. 8349 of 1988 the writ petitioner says ""This respondent humbly

denies that on 11th March 1988, this respondent entered the office of the District Collector and proceeded to have intimate conversation with the

Collector"". It is incorrect to say that the writ petitioner explained to me as to how the V.I.Ps. are normally attended to by the Revenue Staff. It is

equally incorrect to say that I appear to have misunderstood what the writ petitioner told me.

(iv) It is equally false to say that I was prejudiced against the writ petitioner because the writ petitioner had received commendation from various

officers. It is also false to say that I started ill will towards the petitioner and that it is a part of a scheme to destroy the official career of the

petitioner.

(v) There is no reason as to why I should take vindictive attitude against the writ petitioner. Admittedly my acquaintance with the writ petitioner

was for a very short period and certainly nothing had happened for me to develop a vindictive attitude against the petitioner. It is incorrect to say

that the entire case of the respondent proceeds upon surmises and the result of

pre-determined bias and vindictiveness. As already stated the petitioner did enter my office on 11th March 1988 and did make a specific offer of a monthly bribe of Rs. 20,000/- to 25,000/-

(vi) It is absolutely false to suggest that my words and deeds showed that I was biased and prejudiced against the writ petitioner. The writ

petitioner is imagining and suggesting certain instances which never took place, just for the purpose of buttressing his allegation of mala fides. I

never commented about the writ petitioner's dress or his wearing new shoes. I never said that the writ petitioner is an ordinary man and that I am

the son of a I.A.S. Officer and did not express any surprise about his adoring clothes equal to me. In fact, I am not in the habit of observing the

dress which a person wears, not am I in the habit of comparing the same with my dress.

(vii) I respectfully submit that I had absolutely no ill will or animosity against the petitioner and the petitioner is making such allegations only for the

purpose of this writ petition. I have written to the first respondent about what actually happened on 11th March, 1988 the actual truth and the

same is not due to any vindictiveness".

9. Mr. D. Raju, learned counsel for the petitioner, would urge that :

(i) No doubt Rule 17(e)(1) enable suspension pending enquiry into grave charges and there is no enquiry pending into grave charges against the

petitioner. The only other contingency will be "pending enquiry into grave charges is contemplated". Unless, there are formulated charge or charges

the power of suspension cannot be invoked. In support of this submission, the learned counsel relies on the decision in P.R. Nayak Vs. Union of

India (UOI), . Though, that related to a different rule altogether, the ratio of that decision would squarely apply to this case. If it is so construed,

then, no suspension is possible.

(ii) As a matter of fact, there are two decisions which clearly support the case of the petitioner. They are : (i) The judgment in W.P. No. 9773 of

1987 which categorically lays down, while interpreting the said rule, that unless on the date of suspension there has been a formulation of charges,

there could be no order of suspension; and (ii) The Judgment in W.P. No. 7855 of 1987 wherein more or less the same view was taken. When

Rule 17(b)(i) of the Rules contemplates "definite charge", it emphasises the

form. Unless, therefore, the allegations are made out, it would amount to arbitrariness.

(iii) From the counter-affidavits it is clear that there are no materials as on today for the framing of the charges. Under these circumstances, the order of suspension is totally unwarranted and arbitrary. It is offensive of Art. 14 of the Constitution as laid down in the Judgment in W.P. No. 11050 of 1986 dt. 9th December 1986.

(iv) Lastly, it is submitted that this is not a case of bona fide exercise of power. It is impossible from the facts and having regard to the short stay of the petitioner that he could have developed so much of acquaintance with the second respondent so as to make such representations as are attributed to him by the second respondent. In any event, it is submitted, pursuant to the interim order of stay the petitioner has been given posting at Sivakasi as Project Director, National Child Labour Project, Sivakasi at Virudhanagar. That may be retained till the charges are framed and there is no necessity to suspend the petitioner till the formulation of charges. Since he is away from the scene of action, evidence against him could be collected without any impediment.

10. The learned Advocate General in opposition to this would urge referring to Rule 17(e)(i) as follows :-

(i) The words used in this rule are wider in concept than the All India Service Rules. In All India Service Rules, the language used is "contemplated/pending". Meaning of charge, according to Webster's Dictionary, is "To put blame on the accused." To enquiry would mean "To seek the truth by investigation or examination". Enquiry, therefore, is a detailed or a systematic investigation into grave accusations. When such an enquiry is pending or contemplated, certainly there could be an order of interim suspension. The question, therefore, would be : When does the accusation start ? In Y. Venkateswarlu Vs. State of Madras, this question is answered by referring to Law Lexicon. That supports the respondents in great detail.

(ii) Alternatively it is submitted that on the issuance of charge memo there commences an enquiry. As regards the first limb, namely, "suspension pending enquiry into grave charges is contemplated", it denotes a stage anterior to the issuance of the charge memo. It is not necessary that there

must be a definite charge or charges. In the nature of things, it is impossible. As a matter of fact, this Court took the same view in W.P. No. 12837

of 1986 with reference to Rule 6.18 of Sidgo Rules. This was appealed in W.A. No. 22 of 1987, reported in 1988 WLR 41 wherein this aspect

of the matter was confirmed. Another case which could be usefully referred to is State of Tamil Nadu v. P. M. Belliappa, (1985) LIC 51.

Therefore, the word "charge" in Rule 17(e)(i) means "accusation". If so construed, it would cover both the stages - anterior and posterior to the

framing of the charges. That such an interpretation alone should be put so as to make the rule workable. In B. B. Mondal v. State of W. Bengal,

1973 II LLJ 57 it has been laid down that "charge" means "definitions is accusation". This interpretation would be in accord with the reason

because, when R. 17(e)(ii) is looked at, it uses the word "complaint". The word "complaint" there includes both investigation and trial. Certainly, it

cannot be contended that there could be a trial on a mere complaint in the absence of a charge memo. It is this kind of interpretation that is

commended as could be seen from G. P. Singh's Principles of Statutory Interpretation", 3rd Edition, pages 12 and 24. Therefore, merely because

R. 17(b) uses the word "charge", it cannot connote the same thing throughout the Rule. It will depend upon the context in which such a word

appears. In R. 17(B) it means reduced to the form of definite charge". In R. 17(e) (i), it would mean "accusation" also. That under different sections

or clauses the same word would mean differently is evident from the decision in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and

Others, . Again in Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, , Headnote (B) indicates that such an interpretation

is permissible. In W.P. No. 2976 of 1978, reported in Dr. Balaguru Vs. The Government of Tamil Nadu and Another, a learned single Judge of

this Court took the view that in order to pass an order of interim suspension pending contemplation of enquiry into the grave charges, there is no

necessity to frame charges.

11. In order to appreciate the power of a master to suspend a subordinate civil servant pending enquiry into charges as an ad interim measure and

not by way of a substantive punishment, the relevant rules will have to be looked at and the interpretation embarked upon. However, a general

background may now be seen.

12. It is well known that suspension is of two kinds, namely :-

(i) Punitive suspension;

and

(ii) Suspension pending enquiry into charges against an employee.

If the suspension is punitive and amounts to a punishment, the same consideration which would apply to dismissal would apply to it also. Where,

therefore, such a punitive order of suspension is made, unless the master is able to justify it on the ground of proved misconduct, he has no right to

suspend an employee or withhold his salary for the period of suspension.

13. With regard to suspension pending enquiry, it is certainly not punitive in character. In such a case, it means the relationship of master and

servant remains in abeyance for a temporary phase. It is an action in order to maintain purity of service when an employee is awaiting an enquiry in

regard to his suspected misconduct. As laid down in Hemanta Kumar Bhattacharjee Vs. S.N. Mukherjee, , the basic idea underlying the root

word "suspend" and all its derivations is that a person while holding an office and performing its functions or holding a 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 or privilege. The legal

position as regards a master's right to place his servants under suspension is now well settled by the decisions of the Supreme Court. The law on

the subject was exhaustively reviewed in Balvantray Ratilal Patel v. State of Maharashtra (1968-II-700). Therein the legal position was stated thus

(p. 703) :

The general principle therefore is that an employer can suspend an employee pending an enquiry into his misconduct and the only question that can

arise in such suspension will relate to payment of his wages during the period of such suspension. It is now well settled that the power to suspend,

in the sense of a right to forbid a servant to work is not an implied term in an ordinary contract between master and servant, and that such a power

can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of

such a power either as an express term in the contract or in the rules framed

under some statute would mean that a master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay the employee's wages during the period of suspension. Where, however, there is power to suspend 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. It is equally well settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of appointment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which, it would be withheld. The distinction between suspending the contract of a service of an officer and suspending him from performing the duties of his office on the basis that the contract is subsisting is important. The suspension in the latter sense is always an implied term in every contract service. When an officer is suspended in this sense, it means that the government 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.

14. Suspension pending or in contemplation of disciplinary enquiry does not amount to temporary removal from service and does not attract Art.

311 of the Constitution (vide *Mohammad Ghouse Vs. State of Andhra*, . Thus it would follow that suspension pending a departmental enquiry or a

criminal charge is a different matter altogether. There, the employee is asked not to associate directly with the activities of his employment because

as a result of pending enquiry or criminal charge, it would be embarrassing for all the parties concerned, for him to be directly associated with the

work of the office. In such a case, some interim arrangement is made for subsistence allowance. However, it is implied that if the ultimate

proceedings ensure in his favour, then, he would get his full wages. In short, the object of suspension is to get away the officer concerned from the

sphere of his activity in as much as it may be necessary to find out facts from

people working under him or look into papers which are in his custody. It would be embarrassing and inopportune both for the officer concerned as well as to those whose duty it is to make the enquiry to do so while the officer is present on the spot.

15. In this back-ground, R. 17 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules may now be seen. This rule is nothing more than a reflection of Art. 311 of the Constitution. The power of ad interim suspension is contained in sub-rule (e) clause (1) of R. 17. It

catalogues the situations in which a member of a service may be placed under suspension from service. It reads as follows :-

Rule 17(e)(i) :- A member of a service may be placed under suspension from service, where

(i) an enquiry into grave charges against him is contemplated, or is pending;

or

(ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest." (The remaining is omitted as unnecessary for the purpose of the present case.)

Sub-clause (i) deals with two different situations, namely where an enquiry :

(a) into grave charges against a member of a service is contemplated;

or

(b) is pending.

What exactly is the meaning of the expression "charges" occurring under this sub-clause requires to be ascertained. But, before we do so, it is

better to refer to sub-rule (b) as well. That is extracted below.

(b)(i) : Without prejudice to the provisions of the Public Servants' Inquiries Act, 1850 (Central Act XXXVII of 1850), in every case where it is

proposed to impose on a member of a service or on a person holding a civil post under the State any of the penalties specified in items (iv), (vi),

(vii) and (viii) in R. 8 the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be

communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other circumstances

which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a return

statement of his defence and to state whether he desires an oral inquiry or to be heard in person. On both an oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charges shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the enquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. "Whether or not the person charged desired or had an oral inquiry he shall be heard in person at any stage if he so desires before passing of final orders. A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of the evidence, if any, and a statement of the findings and the grounds thereof.

(ii) After the inquiry or personal hearing referred to in clause (i) has been completed, and if the authority competent to impose the penalty mentioned in that clause is of the opinion, on the basis of the evidence adduced during the inquiry, that any of the penalties specified therein should be imposed on the Government Servant it shall make an order imposing such penalty and it shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed;

Provided that in every case where it is necessary to consult the Tamil Nadu Public Service Commission, the disciplinary authority shall consult the

Tamil Nadu Public Service Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty;

Provided further that in case of a person appointed to a post in a temporary department by recruitment by transfer from any other class or service,

the State Government may at any time before the appointment of the said person as a full member to the said post revert him to such other class or service either for want of vacancy or in the event of his becoming surplus to requirements or if the State Government are satisfied that he has not

got the necessary aptitude for work in the said post, without observing the formalities prescribed in this sub-rule.

Explanation : An opportunity to show cause against the imposition of any of the penalties referred to in this sub-rule shall be given, after the

authority competent to impose the penalty arrives at a provisional conclusion in regard to the penalty to be imposed, either by such authority

himself or under his direction, by a subordinate authority who is superior in rank to the officer on whom it is proposed to impose the penalty.

(16) Here also it talks of "charge" or "charges". Whether the word "charges" should be ascribed the same meaning is what requires to be

ascertained. Before we proceed to discuss that aspect, let us refer to the Judgment of Nainar Sundaram J. in W.P. No. 9855 of 1967, reported in

1988 WLR 97 (N. Deenadayalan v. The Deputy Inspector General of Police, Chengalpattu Range) on which Mr. D. Raju, learned counsel for the

petitioner, relies and wherein the learned Judge held as follows :-

The language of Rule 3(e)(1)(i) is plain and unambiguous. It is possible to countenance suspension of a member of the service without formulating

grave charge or charges under Rule 3(e)(1)(i) of the Rules. If the answer is to be given in the affirmative, that would be doing violence to the plain

and unambiguous language if Rule 3(e)(1)(i). If the intention of the rule making authority was to confer a power of suspension even before the

initiation of disciplinary action and formulation of charges, a separate rule would have got enacted or R. 3(e)(1)(i) itself would have been aptly

worded to state that even in the contingencies of serious allegations or accusations or imputations against a member of the service, suspension

could be resorted to. But that has not been done.

The enquiry contemplated must be into grave charges. That is what the plain language of Rule 3(e)(1)(i) conveys. Under R 3(b)(i) of the Rules,

charges could only mean the reduction to a definite form the grounds on which it is proposed to take action. Same meaning should be annexed to

the expression charges occurring in Rule 3(e)(1)(i) of the Rules. It is not possible to read something into the Rule, which is not explicit therein.

17. For this conclusion, the learned Judge relied on certain unreported decisions of this Court rendered in W.P. Nos. 304, 390 and 391 of 1982

dt. 7th December 1982 (S. Vasudevan v. The Government of Tamil Nadu) which was appealed against. But the suspension was quashed on a

different reasoning as seen from the decision in The Government of Tamil Nadu

v. S. Vasudevan, (1984) LIC 1875 . Further reliance was placed on the decision of the learned single Judge himself in A. Antony v. The Conservator of Forests, Vellore (W.P. No. 9733 of 1987) dt. 3rd November 1987. The learned Judge distinguished the decision in Dr. Balaguru Vs. The Government of Tamil Nadu and Another, on facts. In the result, he came to the conclusion that there must be a formulation of charges since the word "charges" would mean the same thing both under sub-rule (e)(1)(i) as well as under sub-rule(b). The word "charge" as seen from "The Concise Oxford Dictionary" means ""accusation, esp. against prisoner brought for trial; lay to person's charge, accuse him of put person on a charge, decide that he will be accused."" According to Webster's Dictionary, "charge" means "indictment; accusation". According to the Grolier International Dictionary, "charge" means "An accusation or indictment". For the sake of completion, the meaning of the word "Enquiry" which is a variant of Inquiry" can also be seen. Meaning of the word "Inquiry, (Enquiry) :

The Concise Webster's The Grolier
Oxford Dictionary International
Dictionary Dictionary

Asking question; 1. The act of 1. To put a
Official inquiring; a question; To
investigation; seeking for request
court of inquiry; information by information.
investigating asking questions;
circumstances of interrogation.
mishap etc.

2. To make an
inquiry; look
into;

2. Search for truth, investigate (1) To

information, or ask about (2) To
knowledge, an ask.
investigation/
examination into
the facts or The act of
principles inquiring; A
question query;
A close examination
of some matter in a
quest for information
or truth.

Therefore, by application of this meaning, the rule would read as a close examination of some matter in a quest for information or truth of grave accusation. If that is contemplated or pending, the power of suspension could be invoked. If the word "charge" means, as stated above, an accusation, once there are accusations which are grave in nature, the power of suspension should be available. This would take within it a stage anterior to framing of charges or drawing up of the charge memorandum. If rule 17(e)(1)(i) is so construed as to mean "accusations", it would cover both the stages because once a charge memorandum is issued, there commences an enquiry which is taken care of by the second limb of the said sub-clause. At the stage of mere accusations, the competent authority merely contemplates an enquiry into those accusations meaning thereby he wants to search for the truth or information or an investigation into those accusations. Such a construction is clearly permissible. This would be clear if sub-clause (ii) of R. 17(e)(1) is looked at. That says "a complaint against him". Certainly, under Criminal Jurisprudence, a complaint could be investigated into. But there cannot be a trial on a mere complaint, unless charges are laid against the accused. This contention of the learned Advocate General seems to be fully warranted. In this connection, it may not be out of context to mention that along with the memorandum of charges, if the statement of allegations is furnished, what is the meaning ? If

that statement of allegations is what is meant under sub-rule (e)(1)(i), the word charge would mean only "accusations". A question may arise whether the word "charges" occurring under the same rule should not be given the same meaning since the word "charges" occurs in sub-rule (b) as well. The said sub-rule delineates the procedure for enquiry wherein an obligation is enjoined that the grounds on which it is proposed to take action shall be reduced to a form of definite charge or charges. When an enquiry takes place, it cannot be on more accusations. It must be only on definite charges. Concerning those charges, the civil servant is called upon to submit his reply and face the enquiry if the reply is not satisfactory. The word "charge" here cannot mean mere accusations but reduced to indictment.

Whether the same words "charge/charges" could mean differently since they occur in the same rule could be seen from what is stated at page 12 of

G. P. Singh's "Principles of Statutory Interpretation" - 3rd Edition. The relevant passage reads as follows :

In case of doubt, therefore, it is always safe to have an eye on the object and purpose of the statute, or reason and spirit behind it. "I say that we must look to what the purpose is", was said by Lord Cairns; and it was observed by Sir John Nigboill that "the key to the opening of every law is the reason and the spirit of the law".

Again at page 24 it is stated as follows :

The same word may mean one thing in one context and another in a different context. For this reason the same word used in different sections of statute or even when used at different places in the same clause or section of a statute may bear different meanings.

In Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, in construing the word "tenant" it was observed as follows :

The expression "tenant" in the different clauses is defined to mean a contractual tenant or a statutory tenant or both. In the principal definition the expression "tenant" means only a person who is a contractual tenant because rent is payable by a contractual tenant and not by a statutory tenant.

By Clause (a) sub-tenants and other persons who have derived title under a tenant before the commencement of the Ordinance III of 1959 would be regarded as tenants. These would be sub-lessees, transferees or assignees of

contractual tenants. Similarly by Clause (aa) persons to whom interest in premises has been transferred in virtue of a notification issued by the State Government permitting in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in notification, would be transferees of contractual tenants. Clause (b) contemplates a tenant holding over and a statutory tenant alike; it takes in a person remaining in occupation with or without the assent of the landlord, when the premises were let to him or to his predecessor before the commencement of the Ordinance. Clause (c) includes in the definition the members of the family of a tenant, statutory or contractual, residing with him at the time of his death, as may be decided in default by agreement by the Court. Having regard to the plurality of its meaning, the sense in which the expression is used in different sections, and even clauses, must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby".

Yet another decision on which reliance is placed by the learned Advocate General is the decision in Chief Justice of Andhra Pradesh and Others

Vs. L.V.A. Dixitulu and Others, wherein the Head note (D) reads as under :

Constitution of India, Art. 371-D, Clause (3) - Andhra Pradesh Administrative Tribunal Order 1975, D/19th May, 1975 under - Applicability of

order - Phrase, "Civil Services of the State" in Clause (c) - Interpretation. (Interpretation of Statutes - Constitutional statutes)".

Nothing in the Order of the President constituting the Administrative Tribunal for Andhra Pradesh confers jurisdiction on the Tribunal to entertain,

deal with or decide the representation by a member of the staff of the High Court or of the Subordinate Judiciary. (Para 78).

Construed loosely, in its widest general sense, this elastic phrase "Civil Services of the State" in Clause (3) can be stretched to include the "officers

and servants of the High Court" as well as members of the Subordinate Judiciary. Understood in its strict narrow sense, in harmony with the basic

constitutional scheme embodied in Chapters V and VI, Part VI and centralised in Arts. 229 and 235, thereof, the phrase will not take in High

Court staff and the Subordinate Judiciary. (Para 62).

The primary principle of interpretation is that a constitutional or statutory

provision should be construed "according to the intent of they that made it". Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation. Where two alternative constructions are possible, the Court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew any other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy any basic scheme and purpose of the enactment. These canons of construction apply to the interpretation of the Constitution with greater force, because the Constitution is a living, integrated organism; having a soul and consciousness of its own. (Paras 63, 64).

When the aforesaid tests are applied, it is seen that the primary purposes of enacting Art. 371-D was twofold : (i) to promote "accelerated development of the backward areas of the State of Andhra Pradesh so as to secure the balanced development of the State as a whole", and (ii) to provide "equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public service." The Statement of Objects and Reasons relating to Art. 371D also does not indicate that there was any intention, whatever, on the part of the legislature to impair or derogate from the scheme of securing independence of the judiciary as enshrined in Arts. 229 and 235. Indeed, the amendment or abridgment of this basic scheme was never an issue of debate in Parliament

when the Constitution (32nd Amendment) Bill was considered. (Paras 70, 73).

Further, the exclusion of the judiciary from the sweep of Clause (3) will not substantially affect the scope and utility of the article as an instrument for achieving the object which the Legislature had in view. (Para 74).

Furthermore, non-use of the phrases "judicial service of the State" and "District Judges" (which have been specifically defined in Art. 236), and

Officers and servants of the High Court" which has been designedly adopted in Arts. 235 and 229, respectively, to differentiate them in the

scheme of the Constitution from the other civil services of the State, gives a clear indication that posts held by the High Court staff or by the

Subordinate Judiciary were advisedly excluded from the purview of Clause (3) of Art. 371D. (Para 77).

There, the words "Civil Service" were given a restricted meaning as not to include the High Court staff and Subordinate Judiciary in Art. 371D

though the expression includes them Art. 311 of the Constitution. Therefore, in our view, the meaning must be ascertained from the context of the

scheme and the object intended to be served thereby. In our view, the power of suspension not by way of punitive action but to keep an officer

out of the sphere of action is a substantive power. It is not dependent on the enquiry on the charges and the result flowing from the enquiry. In

other words, what we want to stress is that the power available under R. 17(e)(1) (i) is independent of R. 17(b). In such a case, it could even be

said that this power of suspension (not by way of punitive action) has been provided by means of an independent rule, this principle of

interpretation that the same meaning should be ascribed to the expression "charge/charges" may not loom large. A fortiori where such an

independent power is provided, though by means of a sub-clause, we see no justification to adopt the line of reasoning as was done by the learned

single Judge (Nainar Sundaram, J., in W.P. No. 9855 of 1987) reported in 1988 Writ LR 97 (Mds). Of course, the learned Judge relied on the

Supreme Court ruling in P. R. Nayak v. Union of India, (supra). In that case, the rule that came up for interpretation was R. 3 of All India Services

(Discipline and Appeal) Rules, 1969. That rule reads as follows :-

3. Suspension during disciplinary proceedings.

(1) If, having regard to the nature of the charges and the circumstances in any case, the Government which initiates any disciplinary proceeding is

satisfied that it is necessary or desirable to place under suspension the member of the Service against whom such proceedings are started, that

Government may -

(a) if the member of the Service is serving under it, pass an order placing him under suspension, or

(b) if the member of the Service is serving under another Government, request that Government to place him under suspension, pending the

conclusion of the inquiry and the passing of the final order in the case :

Provided that, in cases where there is a difference of opinion between two State Governments, the matter shall be referred to the Central

Government for its decision.

On that basis it was argued that the language of R. 3 is clear and unambiguous. It is not permissible on plain reading of sub-rule (1) to order

suspension merely because there were certain accusations or imputations against an employee which call for an enquiry. In the guise of

interpretation, Courts cannot re-write a rule to be in accord with their view of what it should be. The Supreme Court in P.R. Nayak Vs. Union of

India (UOI), :

In our view, the second contention possesses merit and deserves to be upheld. In case we uphold this contention it would be unnecessary for us

to express any considered opinion either way on the other contentions. R. 3 of the All India Services (D & A) Rules, 1969, which has already

been set out in extenso, provides for suspension during disciplinary proceedings. Sub-rule (1) of this rule on its plain reading empowers the

Government, which initiates any disciplinary proceedings, on being satisfied having regard to the nature of the charges and the circumstances, of the

necessity or desirability of placing under suspension, the member of the Service against whom such proceedings are started, to pass an order

placing him under suspension or if he is serving under another Government, to request that Government to suspend him. It does not suggest that

suspension can be ordered merely when disciplinary proceedings are contemplated. The language used in sub-rules. (4) to (7) also suggests that

these rules do not authorise order of suspension of the delinquent member of the

Service merely because disciplinary proceedings against him are contemplated. Suspension under those sub-rules may be ordered only either after conviction (deeming provision under sub-rule (4) or when criminal proceedings are actually in progress (sub-rule (5)) or when after the penalty imposed on him having been set aside, the disciplinary authority decides to hold further enquiry (deeming provision under sub-rule (6)). Clause (b) of sub-rule (7) similarly provides for continuation of order of suspension, if any other disciplinary proceeding is commenced against the delinquent member of the service, during the continuance of the earlier suspension - actual or deemed. The legislative scheme underlying R. 3 is thus clearly indicative of the intention of the rule making authority to restrict its operation only to those cases in which the Government concerned is possessed of sufficient material whether after preliminary investigation or otherwise and the disciplinary proceedings have in fact commenced and not merely when they are contemplated. An order of suspension before the actual initiation or commencement of disciplinary proceedings appears to us, therefore, to be clearly outside the ambit of R. 3 and we find no cogent ground for straining the plain language of R. 3(1) so as to extend it to cases in which disciplinary proceedings are merely contemplated and not actually initiated or commenced".

In so doing, it overruled the decision in *The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh*, which dealt with

R. 7(1) of the All India Services (Discipline and Appeal) Rules, 1955 which was replaced by R. 3(1) in 1969. Again at page 547 of *P.R. Nayak*

Vs. Union of India (UOI), it was observed as follows :-

Needless to add that we are also aware of another statutory rule (R. 40(1)(a) and (b) of Railway Protection Force Rules, (1959) made by the

central Government under S. 21 of the Railway Protection Force Act, 1957 (23 of 1957) which provides for suspension of a member of the Force

(a) where an investigation into charges against him is contemplated or pending or (b) where a case against him in respect of any criminal offence is

under investigation or trial". The existence of such rules only serves to further fortify our opinion already expressed on the plain language used in R.

3(1)(a) and (b) which is by no means obscure or ambiguous. The different phraseology, in our view, is designedly used to express different

legislative intention.

In our considered view, R. 17(e)(1) of the Rules is more comprehensive in its scope, and the words therein are designedly used to express a

different legislative intention as under R. 40(1)(a) and (b) of the Railway Protection Force Rules, 1959 to which the attention of the Supreme Court

was drawn in the decision in *P. R. Nayak v. Union of India* (supra). Thus we conclude that R. 17(b) of the Rules prescribes the grounds on which

it is proposed to take action. Those grounds shall be reduced to the form of definite charge or charges. Thereafter, the member of the Service is

required to submit a written statement of defence to the charge or charges. The framing of charge under R. 17(b) is essential to enable the member

of the Service to meet the case against him. On the contrary, Rule 17(e)(1)(i) is different. That provides for suspension under the contingencies

contemplated in the Rule. Having regard to the scope of these rules, we are of the opinion that the word "charges" occurring in R. 17(e)(1)(i)

should be given a wider meaning so as to cover the accusations or imputations made against the member of the Service. If so construed, there is no

need for formulation of charges as laid down by Nainar Sundaram, J. Having regard to the object and the intendment of these sub-rules, with

respect, we are unable to share the view of the learned Judge. Accordingly, we overrule the said decision.

Similar argument was raised before one of us sitting singly (Mohan, J.) and it was dealt with in *M. Swaminathan v. The Chairman and Managing*

Director, Tamil Nadu Small Industries Development Corporation Ltd., Madras (W.P. No. 12837 of 1986), dt. 22nd December 1986. It was held

therein as follows :-

The Rule in relation to suspension is 6.18. Clause (a) alone is relevant for our purpose and the rest is unnecessary. The question is, whether

Clause (a) of R. 6.18 would apply ? According to Mr. Govindswaminathan, learned counsel for the petitioner, first of all there is no proceedings

on grave charges which is contemplated. Undoubtedly, it is not pending. But, for my part, I am unable to agree with this submission because the

order of suspension which I have fully extracted clearly shows that a detailed enquiry is warranted into the complaints which are serious in nature

made as against the petitioner ""Contemplation"" as per Concise Oxford

Dictionary means thus :

Contemplate V. v.t. gaze upon; view mentally; expect regard as possible; intend, purpose 2. v.i. mediate.

This is wide enough. Therefore, should the enquiry result a prima facie case, disciplinary proceedings will have to follow a fortiori. However,

learned counsel would rely upon P.R. Nayak Vs. Union of India (UOI), and contend that no power of interim suspension can ever be exercised in

a case of mere contemplation. I am afraid this ruling has no application to the facts of this case because that was a case of suspension under R. 3 of

the All India Services (Discipline and Appeal) Rules of 1969.

There also, the decision in P. R. Nayak v. Union of India, (supra) was referred to and distinguished and ultimately it was concluded, as could be

clearly seen, that initiation of disciplinary proceedings was essential in that case but here no such requirement is made out. This was taken up in

appeal in W.A. No. 22 of 1987 reported in 1988 W.L.R. 41 and this line of reasoning was confirmed. In the Writ Appeal, the Division Bench

held as follows :-

We are, however, unable to agree with the contention of learned counsel for the appellant that the order of suspension is not valid as there are no

materials in support of the same. Nor can we accept the argument that an order of suspension cannot be passed unless a disciplinary proceeding is

initiated. The relevant rule is R. 6.18. It reads as follows :-

The competent authority may place an employee under suspension -

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

(b) where a case against him in respect of criminal offence is under investigation, inquiry or trial"".

Learned counsel for the appellant submits that a preliminary enquiry should be held on the complaints made against the appellant and only after

arriving at conclusion that a disciplinary enquiry is warranted, an order of suspension could be passed. We are unable to agree with the learned

counsel on this aspect of the matter. The rule provides for suspension even when a disciplinary proceeding is contemplated. The word

Contemplation"" has got a wide connotation and it is not necessary that there should be a preliminary enquiry. The order of suspension states

clearly that ""A perusal of some of the connected files shows that these allegation warrant a detailed enquiry"". It is stated by the second Respondent in the counter affidavit filed in the writ petition that he placed the appellant under suspension only after he was convinced that there was prima facie case in the allegations and complaints received against the appellant which were serious in nature and after he satisfied himself that it will not be in the interest of the Corporation to allow him to continue in office any longer. Mr. Dolia, learned counsel for the respondents, placed before us certain files to prove that there were enough materials to make out a prima facie case against the appellant. We do not think it necessary to go into the question whether the materials were sufficient or not. It is not within our province to do so. It is enough to point out that an order of suspension could be made under the rules even when a disciplinary proceedings is contemplated and in the present case, the order of suspension refers to the position that the allegations made against the appellant warranted a detailed enquiry"".

Here again, the Division Bench referred to the decision in *P. R. Nayak v. Union of India*, (supra) and held as follows :-

It will be seen from the passages extracted above that the Supreme Court makes a distinction between the language of R. 12 of the Central Civil

Services (Classification, Control and Appeal) Rules, 1957, and that found in Rule 3(1) of the All India Services (Discipline and Appeal) Rules,

1957. R. 6.18 of the Service Rules of SIDCO resembles R. 12 of the Central Civil Service (Classification, Control and Appeal) Rules, 1957.

Hence, there is no difficulty in holding that an order of suspension can be made even before the actual initiation of a disciplinary proceedings. It is

for the Board of Directors to consider the matter and pass an order of suspension if they think it necessary"".

Therefore, we reject the argument of the learned counsel for the petitioner that unless there is a formulation of charges, there cannot be an order of

suspension, under R. 17(e)(1)(i) of the Rules. Prudence should also dictate this course because if the nature of misconduct is such (it is

unnecessary for us to give instances of grave misconduct) that it may not be possible to formulate charges, the exigencies of administration might

require immediate suspension so that such a grave misconduct may not be repeated. One illustration will suffice. Supposing a civil servant is caught

red handed while accepting a bribe to do a favour. In such a case, to insist that all the materials be gathered against him, formulate the charges and thereafter suspend him would not only be ill-advised but time-consuming. By virtue of his office, the civil servant may easily tamper with the entire evidence and prevent witnesses from coming forward to depose against him.

22. The next question is whether the accusations are grave enough. We think we would rather do well to extract the letter of the Collector dt. 16th

March 1988 addressed to the Chief Secretary in full. It reads as under :

Respected Sir,

It is with a sense of urgency and regret that I wish to record, and place before you the following facts for kind information and necessary action.

On Friday 11th March, 1988 late evening I was attending to office work/files in my office at Saidapet. At about 6.15 p.m. the District Revenue

Officer (D.R.O.) Thiru D. Uthirakumaran came in, and joined me in my chamber. We generally discussed routine administrative matters, and in

particular, the arrangements for the forthcoming Gubernatorial visit to the District. The D.R.O. at this point mentioned that I could "trust" him

entirely, and "whatever I wanted" would be complied with. Inasmuch as this offer came in the back drop of the discussion regarding the V.I.P.

visit, I assured him that I would take his help, and also gave him two/three issues to attend to. During the course of these discussions, he then

began to tell me about the various officers he had served under and that in most case he had received outstanding C.R. entries. In this discussion,

the theme again centered around the issue of his asking me to depend upon him "to do things for me". Not quite comprehending the full implications

of these offers of service, I simply assured him that he after all was the number 2 in the district revenue administration, and that I therefore would

also place trust and confidence in him. In the flow of conversation he then began to talk of how badly corruption had scooted into official circles -

ranging from lower functionaries to Chief Secretaries. It appeared at that time to be a simple remark on the general state of affairs. However, this

statement, and the constant refrain "to do things for me" in retrospect stands out as a preamble to his rather shocking overtures towards bribery

and corruption towards me. For, after repeating the statement about corrupt officials, and how I should ask him for "anything" I want, he leaned

forward, and in a lower tone made me an offer of Rs. 20,000/- to Rs. 25,000/- per month. ""We can give Collector twenty thousand to twenty five thousand per month"". And then went on to elaborate that it would be given to me in complete secrecy during my tours to Madras City, or in any/whatever manner or place I chose. He assured me that the matter would be personally taken care of by him, and that I need not fear on any count of risk.

Sir, I must admit at this point that I was completely taken aback by this rather crude and vulgar offer, and was thoroughly embarrassed. Before I could say anything further, he kept making the offer of attending to whatever I need. In reply I told him that he must be careful, and that I did not need anything. In retrospect, I can imagine that he must have inferred this to be a caution in complicity.

While he continued with his offers, I then tried to change the subject. I told him that what I needed from him was good work, and if there was anything else, I'd let him know. This conversation would have lasted for about a half an hour or so. At the end, again told me that I should trust him completely, and all I had to do was ""give"" him a ""hint"" of whatever I needed, and he would personally see that it was provided. The intonations of these statements again left me in no doubt about their meanings. He then got up, shook my hand, and again implied that it was deal struck, and a partnership established in corrupt complicity.

Sir, I beg to submit that the facts and circumstances narrated above bear very grave implications and consequences. For one, in as much as the offer was made to me by my own immediate subordinate officer, it leaves me in little doubt that henceforth he will be collecting money/bribes on my name. There already exists a great amount of cynicism in the district, vis-a-vis corruption. The situation described above will do little to alleviate it. In essence, district administration is more than certainly likely to receive a severe set back.

Apart from these general consequences, the implications are rather serious on a personal level. The consequences it will have on my reputation may well be appreciated. Needless to say, it strikes against the very fundamentals of the principles and value structure that have sustained me so far.

Sir, I therefore beg for your kind consideration in the matter. In do understand that in as much as the conversation that took place in the privacy of

my chambers, the veracity of my narrative cannot be relied upon any more than may be made in any counter by him. However, I do assure your

Sir, that I have no personal motives against the individual. I write this not so much in my personal capacity, but as the Collector (and administrative

head) of Chengalpattu District. In this I must assume that I am a repository of Govt. trust and faith. And should I be found wanting, and where

sufficient confidence is not placed upon me, then from that point I cease to be effective, and will therefore be poor in the delivery of administrative

objectives. It is with this sense of belief that I seek your trust in my statements above. It is with a sense of duty that I submit the above facts to

enable suitable action being initiated in the matter. And, I sincerely hope that I do retain your kind confidence in me. I assure you Sir, of my highest

considerations, and remain humbly, and

Yours sincerely

Sd. Sameer Vyas"".

This speaks eloquently. Without much comment, we would say that these accusations are grave enough since should ultimately they be proved

would result in serious consequences. Therefore, it is not correct to urge that there are no materials for the framing of the charges. In this

connection we may usefully refer to the decision in State of Tamil Nadu v. P. M. Belliappa, (supra). Therein, it is observed as follows (at pp : 58-

59) :

May be, one of the purpose behind the order of suspension could be that; but that alone could not be the purpose, and object of the order of

suspension. The seriousness of the allegations and the nature of the allegations and the embarrassment faced by the Government and the necessity

to keep the high morale of the public services could also be factors that could legitimately weigh with the Government in making the order of

suspension. Hence, it is not possible for us to lay down that only where there is a desire and necessity to keep the Government servant out of the

sphere of his erstwhile activity, so that there may not be any impediment for carrying out the further investigation, the order of suspension could be

passed. If we countenance this as the only principle, that will be practically

putting a premium on the rule which is liberally couched. The rule contemplates suspension after the Government is satisfied that it is necessary and desirable. This necessity and desirability need not necessarily be scuttled down to one contingency, namely, to keep the officer out of the sphere of his erstwhile activity to facilitate further investigation without embarrassment and impediment both to the department and the Government servant"".

As a matter of fact, the counter affidavit filed by the first respondent specifically states as follows :-

Though the letter of the Collector dt. 16th March 1988 can itself form the basis of a charge memo, having regard to the wide implications and the nature of the offer made by the writ petitioner, it was felt necessary to unearth all the conspirators in the case and frame a comprehensive and a definite charge memo.

Hence, it cannot be contended that there are no materials for the framing of the charges.

23. Merely because it was held that the petitioner was not entitled to subsistence allowance, if he shifted his headquarters from Kancheepuram to

Madras though an application was made on medical grounds for such shifting, it cannot mean that it is not a bona fide exercise of power. Nor is

there any vindictiveness or arbitrariness in the allegations to which we have made a reference and which would certainly warrant suspension under

R. 17(e)(1)(i) of the Rules in public interest.

24. A request was made to us that in compliance with the interim order passed earlier, the petitioner was given posting as Project Director,

National Child Labour Project, Sivakasi at Virudhunagar and, therefore, there is no need to revive the order of suspension should this Court reject

the contention of the writ petitioner. Certainly the respondents cannot be blamed for having complied with the interim order which they are bound

to obey. Nor again, do we think that it is any function of this Court to direct the first respondent as to what he should do in the interest of

administration. It is a matter entirely within the province of the Government.

25. In the result, we conclude that there are no merits in this writ petition which is hereby dismissed. However, in the circumstances of the case, we

made no order as to costs.