

(1985) 09 GUJ CK 0018
In the Gujarat High Court

J.S. Solanki

APPELLANT

Vs

Principal Chief Conservator of Forests and Another

RESPONDENT

Date of Decision : 16-09-1985

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 9(58)
Bombay Police Act, 1951 — Section 15
Constitution of India, 1950 — Article 309, 310, 311
Penal Code, 1860 (IPC) — Section 161

Citation : (1986) 1 GLR 41

Hon'ble Judges : R.J. Shah, J;A.M. Ahmadi, J

Bench : Division Bench

Judgement

A.M. Ahmadi, J.—Is it open to the State Government/Competent Authority to both transfer and suspend, the Government servant against whom an enquiry touching his integrity is under contemplation or actually pending or whether only one of the two alternatives is available? Is the principal question which arises for determination in these two writ petitions?

2. The facts leading to two petitions.briefly stated are as under:

Facts of Spl. Civil Appln. No. 86 of 1985.

The petitioner J.S. Solanki a Range Forest Officer stationed at Dharampur, Dist. Bulsar came to be suspended by an order dated July 7, 1984, annexure-A to the petition on the allegation of having prepared false vouchers, made for payment of wages to labourers and for encashing a cheques of Rs. 20,000/- after having left the charge of his post. During the suspension period his Headquarters came to be changed to Rajkot. The petitioner contends that the order of his transfer-cum-suspension is mala fide and contrary to the guidelines laid down by the Government.

Facts of Spl. Civil Appln. No 3660 of 1985

The petitioner A.D. Chaudhari, Sub-Inspector of Police, Ahmedabad City, came to

suspended by an order dated 23-5-1984 as prosecution was launched against him u/s 5(2) of the Prevention of Corruption Act and Section 161/34 of the Indian Penal Code for accepting illegal gratification from one Rajendrabhai Shivrajsing Bharodia. The impugned order of suspension annexure. A further states that during his suspension, his Headquarters will be at Surendranagar. He challenges the order of suspension on the ground it is mala fide and contrary to Government guidelines.

3. In both the petitions the principal contention which the delinquents have raised is that no delinquent can be simultaneously transferred and suspended for the same charges. On this and other allegations, the petitioner of Special Civil Application No. 86 of 1985 sought certain interim orders from this Court. A Division Bench consisting of P.S. Poti, C.J. (as he then was) and I.C. Bhatt, J., by an order dated 29-1-1985, granted interim stay of the operation of the suspension order observing:

It is well settled law that suspension is not to be conceived as a punishment but is really to be intended to remove the Officer from his sphere of activity since it may be necessary to find out facts from people working under him and it would be embarrassing to the Officer concerned as well as those who were his associates in his Office, if, in his presence, the enquiry is held. We are supported by the decision in the case of *The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh*, that such a situation can be avoided either by transferring or by temporarily putting him out of action by suspension. The same question has been considered elaborately in a decision of High Court of K.K. Ramankutty Vs. State of Kerala and Another, . At Paragraph 28 of the judgment the circumstances in which transfer or suspension, the alternative would be justified are considered by the Court. When, pending inquiry into allegations, a person is transferred to a distant station, which puts him out of action in the area where he is said to have been responsible for the misconduct, there will be no need for suspension, for that is intended to achieve the same purpose. Prima facie, that is the case here and there is the further fact that despite the operation of suspension for six months, no progress has been made. That is why we grant him interim stay of further operation of the suspension order.

4. In the other petition Special Civil Application No. 3660 of 1985, no interim relief was granted as the petition was set down for early final hearing.

5. The principal question which, therefore, arises for consideration is whether it is open to the Government to both suspend and transfer a Government servant against whom an enquiry is contemplated or is actually in progress or who is prosecuted or who is facing prosecution for alleged misconduct. Under the ordinary law of master and servant, when any citizen takes up employment with any Government, the latter undertakes to pay a certain remuneration for the discharge of specified duties by the former. So long as the employee is willing to discharge the duties assigned to him the Government is under an obligation to remunerate him. Thus, under any contract of employment each party, to the

contract is required to perform its material obligation thereunder the employee to properly and satisfactorily and to the best of his ability discharge the duties assigned to him and the employer to pay him the remuneration fixed under the contract rules. Inherent in the contract of service is the condition that the employee shall maintain absolute integrity and devotion to duty and observe proper norms of behaviour, more so in the case of a Government servant who is required to deal with the members of public. It is, therefore, necessary or every civil servant to realise that he is expected to observe certain rules of conduct and discipline, both express and implied in the discharge of his duties. The standard of behaviour required to be enforced would be all the more strict if the civil servant belongs to a disciplined force like the police service.

6. The next question is whether the Government can suspend the contract of service if the civil servant fails to observe the code of conduct, written or implied. The answer to this is provided firstly by Articles 310 and 311 of the Constitution of India and the Conduct and Discipline Rules framed in that behalf. The principle of the maxim "*durcmte beneplacito*" engrafted in Article 310 of the Constitution of India invests the State with absolute over the the tenure of every civil servant subject to the processual limitation imposed by Article 311 of the Constitution of India which inter alia provides that no Government servant shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him, and given a reasonable opportunity of being heard in respect of those charges. It is clear from the above provisions that the State can dispense with the services of the civil servant on charges of misconduct after following the principle of natural justice engrafted in Article 311 of the Constitution of India.

7. Article 309 of the Constitution of India empowers the State Government to regulate recruitment and conditions of service of persons appointed to public services in force in connection with the affairs of the Union or of any States by an Act of Legislature and until then by rules made by the President Governor, as the case may be. If no rules are framed under this Article, it would be open to the Government to do so by executive orders. These rules or executive orders must, however, conform to the requirements of the Constitution In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Gujarat framed the Gujarat Civil Services (Discipline & Appeal) Rules, 1971. Under the said rules, penalties that may be imposed on a delinquent against whom charges are established are divided into (1) minor penalties and (2) major penalties. Minor penalties are censure, withholding of increments or promotion or recovery from the delinquent's pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders. Major penalties include dismissal or removal from service, reduction in rank, compulsory retirement and reduction to a lower stage in the time scale etc. The procedure for imposing penalties has been set out in Rules 9, 10 and 11 of the Rules. It will be apparent from these rules that no order imposing of the penalties specified therein can be passed except after enquiry held in the manner

provided by the rules giving sufficient opportunity to the delinquent to meet the charges levelled against him.

8. Sub-section (1) of Section 25 of the Bombay Police Act, 1951 provides that the State Government or any Officer authorised by Sub-section (2) in that behalf may suspend, reduce, dismiss or remove an Inspector or any member of the subordinate ranks of the Police Force whom he considers cruel perverse, remiss or negligent in the discharge of his duty or unfit for the same Clause(c) of Sub-section (2) of Section 25 of the said enactment next provides that the exercise of any power conferred by the sub-section shall be subject always to such rules and orders as may be made by the State Government in that behalf. In exercise of powers conferred by Clause (c) of Sub-section (2) of Section 25 of the said Act, the State Government framed rules called the Bombay Police (Punishment and Appeal Rules 1956. Rule 3 catalogues the punishment which can be imposed on any Police Officer; they include dismissal, removal, compulsory retirement, reduction in rank, suspension or recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence, or breach of order. Sub-rule 5 of Rule 3, however, states that before any punishment is imposed on any police officer, a departmental enquiry into his conduct will be held and written note of the enquiry with the reasons for passing an order imposing any of the punishment shall be made by the to concerned authority. Right of appeal is provided by Rule 6 and revision to the Inspector General of Police by Rule 17 of the said Rules.

9. We notice from the above that the constitutional requirements and the requirements of Rules framed under the proviso to Article 309 of the Constitution of India or the Rules framed under the statute call for a departmental enquiry before any penalty is imposed on a delinquent civil servant. There may be a sufficient time lag between the date of initiation of an enquiry and the date of punishment. A question naturally crosses one's mind as to whether the employer is bound to allow a delinquent who is facing serious charges to continue to hold the post or can the delinquent be temporarily deprived of his charge during the pendency of the enquiry? As observed earlier, under a contract of employment, the employer undertakes to remunerate the employee for discharging the duties assigned to him. If the master is not satisfied with the services rendered by the employee, he would be free to put an end to the contract of service unless precluded from doing so, under the terms of contract or the rules governing the same. In cases where the hire and fire rule cannot be invoked, the master can temporarily suspend the contract by asking the employee not to report for duty during the pendency of the enquiry, but in the absence of rules permitting reduction in the quantum of remuneration during the suspension period, the employee would be entitled to full wages. It seems, therefore, well settled that an interim suspension can be ordered during the pendency of a departmental enquiry, even if the contract of employment, rule or statute is statue on that point. It is another matter that in such cases, the employee would be entitled lo full wages. Suspension causes temporary privation of office. There is no

degradation or loss of office, Unless suspension is made a substantive punishment under the Rules as in the case of Clause (a-2) of Sub-rule (i) of Rule (3) of the Bombay Police (Punishment and Appeal) Rules, 1956 which can be imposed on proof of misconduct, it is not punishment if resorted to when a departmental enquiry is contemplated or actually in progress. By reason of suspension, the employee is prevented from discharging the duties of his office and he is paid salary or suspension allowance as provided by Rules during the period of suspension.

10. The General Clauses Act expressly provides that the power of appointment includes the power to suspend. Reviewing the law of suspension in *Balvantray Ratilal Patel Vs. The State of Maharashtra*, , the Supreme Court observed that the general principle is that an employer can suspend an employee pending enquiry into his alleged misconduct. Apart from this general principle, we would point out that the cases of the two delinquents before us are governed by statutory rules. Rule 5 of Gujarat Civil Services (Discipline & Appeals) Rules 1971 provides as under:

Rule 5(1):

The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered by the Government in that behalf may place a Government servant, under suspension:

- (a) where a disciplinary proceeding against him is contemplated or is pending, or
- (b) where a case against, him in respect of any criminal offence involving moral turpitude is under investigation, enquiry or trial;

Provided that where the order of suspension is made by an authority subordinate to or lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

5(2)

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

The rest of the clauses are not material for our purpose.

11. It would appear from this rule that since a departmental enquiry was

contemplated against the petitioner of Special Civil Application No. 86 of 1985. it was permissible to place him under suspension during the pendency thereof.

12. Rule 3(1-A) of the Bombay Police (Punishment and Appeal) Rules, 1956 provides for suspension when an enquiry is contemplated or is pending or a complaint of any criminal offence is under "investigation or trial. The relevant rule is in the following language.

Rule 3(1-A)-

(i) The appointing authority or any authority to which it is subordinate of any other authority empowered by the State Government in this behalf may place a Police Officer under suspension where:

(a) an inquiry into his conduct is contemplated or is pending, or

(b) a complaint against him of any criminal offence is under investigation or trial: Provided that where the order of suspension is made by an authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order of suspension was made. Explanation : The suspension of a Police Officer under this sub-rule shall not be deemed to be a punishment specified in Clause (a-2) of Sub-rule (i). (ii) A Police Officer who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended by the appointing authority under this rule.

The rest of the clauses are not material for our purpose.

13. Section 15 of the Bombay Police Act, 1951 provides that "the powers, functions and privileges vested in a police officer shall remain suspended while such police officer is under suspension from office; provided that notwithstanding such suspension, such person shall not cease to be a police officer and shall continue to be subject to the control of the same authorities to which he would have been, if he was not under suspension.

14. it would appear from the above rules that the police officer against whom a departmental enquiry is contemplated or is actually initiated can be placed under suspension pending the completion of the enquiry. Such a suspension is not punishment as distinguished from suspension contemplated by Clause (a-2) Sub-rule (i) of Rule (3) of the said Rules. The delinquent police officer before us was facing a charge of corruption u/s 5(2) of the Prevention of Corruption Act and Sections 161/34 of the Indian Penal Code at the relevant point of time. Since he was facing prosecution for the commission of the above offences, he was liable to be suspended under Clause (b) of Sub-clause (i) of Clause (1-A) of Rule 3 of the Bombay Police (Punishment & Appeal) Rules, 1956.

15. The Bombay Civil Services Rules 1959 provide for subsistence allowance to a Govt. servant placed under suspension. Sub-rule (i) of Rule 151 of the said Rules states that a Government servant under suspension or deemed to have been

placed under suspension is entitled to a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance based on such leave salary provided that where the period of suspension exceeds six months, the authority which made or is deemed to have made the order of suspension is competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months. It would, thus, appear from the above rule that when a Government servant is placed under suspension, he is not entitled to full wages during the period of suspension, but to subsistence allowance as provided by the said Rules.

16. Transfer, according to Rule 9(58) of the Bombay Civil Services Rules means the movement of a Government servant from one headquarters station in which he is employed to another such station either to take up the duties of a new post or in consequence of a change of his headquarters. Under Rule 22, a Government servant may be transferred from one post to another on account of inefficiency or misbehaviour or on his written request. It will be seen from the above rule that the Government has inherent right to transfer a Government servant from one headquarter to another or from one post to another except where a Government servant belongs to a non-transferable post. Transfer, is therefore, an incidence of service and there is nothing in the rules which lay down that the headquarters of a Government servant who is placed under suspension will not be changed while he is under suspension. As seen earlier suspension is not punishment and on suspension, the Government servant does not cease to be subject to the control of the concerned authorities. There is nothing in the rules, discussed above to suggest that it is not open to the authorities to which the concerned delinquent was subject to place him under suspension and at the same time to change his headquarters.

17. Mr. Oza, the learned advocate for the petitioners placed strong reliance on a few observations made by the Supreme Court in *The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh*, . In that case, the delinquent, a member of the Indian Police Service who was at the relevant point of time the Deputy Superintendent of Police, Ranchi (Bihar) was alleged to have indulged in corruption and malpractices. His grievance in particular was that as there were only allegations against him which had not crystallised into charges, and order of suspension could not have been made before departmental proceedings were actually started and while they were merely under contemplation. It may be mentioned that in the meantime, he was transferred to Patna as Special Officer, Political, General and Transport Department. The validity of the suspension order had to be tested in the light of Rule 7 of the All India Service (Conduct) Rules 1954 which provides as under:

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 proceedings 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 enquiry 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 whose decision thereon shall be final.

(2) A member of the Service who is detained in official custody whether on a criminal charge or otherwise for a period longer than forty-eight hours, shall be deemed to have been suspended by the Government concerned under this rule.

(3) A. member of the Service in respect of or against whom an investigation, enquiry or trial relating to a criminal charge is pending may, at the direction of the Government under which he is serving, be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a Govt., servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude.

18. The crucial question before the Supreme Court was whether suspension of a member of the Service can only be ordered after definite charges have been communicated to him or whether the Government was entitled to place him under suspension even before that stage was reached after the preliminary investigation had been made into the conduct of the concerned officer following allegations of corruption and malpractices levelled against him. To determine this question, the Court was required to find out the object of placing a delinquent under suspension. After referring to the meaning of term "suspension" in the Oxford Dictionary the Supreme Court observed that a master can, subject to the contract of service, ask his servant not to render any service, without assigning any reasons. This would not be by way of punishment and hence the master will have to pay him his wages or remuneration. Referring to Rule 7 extracted above, the Court pointed out that when serious allegations of misconduct are imputed against a member of Service, normally it would not be desirable to allow him to continue in the post where he was functioning. If the disciplinary authority takes note of the allegations made against the delinquent and after some preliminary enquiry feels that a further investigation is necessary to be made before definite charges can be framed against the delinquent, it would not be improper to remove the officer concerned from the sphere of his activity to facilitate securing of facts from people working under him or to look into papers in his official custody. In such situation, it would be embarrassing and inopportune both for the concerned officer as well as to those charged with the duty to enquire into the allegations while the officer is present at the spot. The Supreme Court then

proceeded to state as under:

Such a situation can be avoided either by transferring the officer to some other place or by temporarily putting him out of action by making an order of suspension.

19. These words were read by Mr. Oza to mean that both the alternatives suspension and transfer were not available to the Government and the Government was bound to choose one of the two alternatives only. He conceded that where serious imputations are made against a Government servant, the Government would be justified in taking the view that such an officer cannot be allowed to function anywhere before the matter has been finally set at rest after a proper enquiry. He stated that once the Government decides to place an officer under suspension there can be no subsequent order transferring him by changing his headquarter, We will examine this contention urged by the learned Counsel a little later.

20. In K.K. Ramankutty Vs. State of Kerala and Another, , a member of the Board of Revenue of the Kerala State was placed under suspension. A departmental inquiry was contemplated against him pursuant to the report of the Enquiry Commissioner Justice M.U. Isaac, under the Commission of Enquiry Act, 1952. Later on, six charges were framed against him. The order of suspension was challenged on the ground that it was based on no relevant or material consideration. The suspension order was passed before initiation of disciplinary proceedings against him. The question which arose for consideration was whether it was consistent with Rule 3 of All India Services (Discipline & Appeal) Rules 1969. That Rule 3 applicable in that case provided as under:

3(i) : If, having regard to the nature of the charges and the circumstances in any case, the Government which initiates any disciplinary proceedings 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.

21. Placing reliance as the words "initiate any disciplinary proceedings" the delinquent contended that the power to suspend could not be exercised unless the proceedings were initiated by framing of charges. The language of Rule 3 reproduced above is substantially the same as that of Rule 7 with which the Supreme Court was concerned. Apart from the question as to the time when the

proceedings would be said to have been initiated, the other question raised before the Court was that the circumstances of the case did not warrant suspension of the petitioner, P.S. Poti, J. (as he then was) of the Kerala High Court, while dealing with this challenge observed as under:

The suspension of a member of an All India Service or for that matter of any civil servant against whom disciplinary proceedings are initiated is not to be intended as a punishment. The order of suspension should not normally depend merely on the gravity of charges but should depend upon a consideration of the question whether it is necessary to keep him away from the post or office that he occupies. The effect of passing an order of suspension is to keep such officer away from his office for the time being and is intended to deprive him of the powers of the office temporarily. Its objective is to remove him from his sphere of influence during the investigation into and trial of the charges against him and this may be necessary to avoid embarrassment to the officer as well as his subordinates and associates in office. It may be that some or many of the records which are in his custody may have to be looked into. His colleague or subordinates or sometimes even his superiors in office may have to be questioned. To keep the officer in his office when there is necessity to find out facts from people working under him or with him and to examine papers in his office would be causing considerable embarrassment if not annoyance, to him as well as to others. There may be cases where such suspension may be justified also to avoid misuse of the authority of his office, misuse which may result in obstruction to the proper trial of the charges against him. The situation could be met by the officer being kept under suspension or in some cases merely by transferring the officer away from the scene, the choice necessarily depending upon the exigencies of the situation.

(emphasis supplied).

22. Referring to the decision of the Supreme Court in Tarak Nath 's case, the learned Judge emphasised the observation that such situation can be avoided either by transferring the officer to some other place or by temporarily putting him out of action by making an order of suspension. The learned Judge, after setting out the circumstances in which an order of suspension would be justified, proceeded to analyse the facts of the case and concluded that the order of suspension passed by the Government did not call for interference, but at the same time, desired that the Government reconsider the question of suspension in the light of the observations made in the judgment.

23. As pointed out earlier, while passing an interim order in Special Civil Application No. 86 of 1985, the Division Bench of this Court relied on the decision of the Supreme Court in Tarak Nath Ghosh's case, and the decision of Poti J in Ramankutty's case and granted an interim relief staying the operation of the suspension order. The petitioners have also relied on another decision of our learned Brother S.B. Majmudar in Special Civil Application No. 906 of 1985 wherein relying on the observations made by the Division Bench while granting

interim stay to the petitioner of Special Civil Application No. 86 of 1985 he held that the authorities had no power to transfer and then suspend the delinquent. The correctness of this decision has been doubted by the learned Government Pleader who urged before us that there is nothing in the rules nor has the Supreme Court held that even if the situation so demands, it is not open to the Government to resort to both, suspension and transfer.

24. The question then is whether these two decisions lay down any absolute rule of law that the State Government has power either to suspend or to transfer, but it cannot resort to both, namely, suspension as well as transfer. The Rules as stated above do not contain anything to show that the Government cannot resort to suspension and transfer simultaneously. Even the Supreme Court in *Tarak Nath Ghosh's* case has nowhere said that even if the facts of a given case so warrant, the State Government cannot exercise both the powers simultaneously or one after another. This does not, however, mean that the Government should exercise the powers to suspend and transfer in all the cases before it. This power to do both is neither limited by the Rules nor by the ratio of any decision of the Supreme Court. In the opinion of this Court the said power to do both is wide not because the Government should exercise it in all cases indiscriminately and without circumspection, but because in a fit and proper case it might not feel the want of power when the circumstances of a given case warrant it. The need to suspend a Government servant against whom serious allegations of misconduct are made cannot be doubted. The object of suspending the Government servant who is facing serious allegations/charges is to put him out of the field of his influence to enable a fair investigation into the charges. In a given case, it may be sufficient to transfer him to put him out of action and if may not be necessary to suspend him also. In another case, it may be sufficient to suspend him to remove him from the field of influence, but it may not be necessary to simultaneously change his headquarters. But cases are not difficult to conceive where it may become absolutely necessary for the Government to not only suspend him, but also change his headquarters. In cases where a delinquent is alleged to have accepted illegal gratification, it would be necessary to suspend him from service because transferring him to another place would not serve the purpose inasmuch as the possibility of his indulging similar activity elsewhere cannot be ruled out. Such a Government servant who is Under suspension may be found to be interfering with the course of inquiry, namely, recording of statements of his erstwhile subordinates, tampering with the evidence of witnesses other than civil servants etc., and hence it may become necessary for the State Government to change his headquarters even while under suspension to put him out of harm's way. While it may be true to say that the exercise of such a power of suspension as well as transfer may become necessary in rare cases, it is not possible to agree with the view that the power does not exist. There is nothing in the rules which we have discussed earlier which places such a restriction on the Government's power to transfer and suspend a civil servant facing grave charges of misconduct. We do not think that the observations of the

Supreme Court extracted earlier were intended to lay down an absolute rule that both the powers of suspension and transfer, cannot be exercised by the Government. In fact, the Supreme Court itself has pointed out that the object of suspending a Government servant is to remove him from the sphere of his activity or influence and if in a given case, it is found that this object is not achieved by resorting to only one of the two alternatives, it may become necessary for the Government to resort to both the alternatives. The Supreme Court merely stated that it would be proper to exercise the power, to avoid embarrassment not only to the delinquent, but also to those working under him likely to be caused by the continued presence of the delinquent on duty. If the object can be achieved by resorting to one of the two alternatives, there can be no doubt that there could be no justification for resorting to both, but, if even after suspending the delinquent, it appears, that by his presence at the headquarters he is trying to obstruct the enquiry or is tampering with the evidence by attempting to influence or browbeat the witnesses who are likely to testify against him in the course of the enquiry, the Government will be left with no alternative but to change his headquarters notwithstanding, his suspension. A Government servant who is prosecuted for bribery cannot be trusted in service anywhere in the State and must be suspended. If after suspension, such a Government servant, by virtue of his presence in the same headquarters attempts to tamper with evidence, there would be no alternative but to change his headquarters also. It is, therefore, not difficult to conceive cases where the facts and circumstances may warrant the exercise of the powers of suspension as well as transfer although such cases may be far and few. Even in Ramankutty's case the Kerala High Court merely reproduced the observation of the Supreme Court and added that the choice of suspension or transfer necessarily depends upon the exigencies of the situation. These observations cannot be read to lay down an absolute rule of law that in no case the Government can exercise both the powers of suspension as well as transfer. While granting the interim order in Special Civil Application No. 86 of 1985 also, the Division Bench was influenced by the fact that despite the suspension order being operation for the last six months no progress made in the proposed enquiry and that is why interim stay was granted.

S.B. Majmudar, J. was not right in reading this order to mean that both the powers of suspension and transfer could not be exercised and the Government had perforce to choose either of the two. If the learned Judge was of the view that both the powers of suspension and transfer could not be exercised we respectfully disagree with that view. We are of the opinion that the power exists but it must be exercised with responsibility and caution and very sparingly in rare cases only.

25. Before we part, we may sound a note of caution. Whenever, an employee is facing charges which can be described as grave, as for example, corruption, misappropriation of large funds, gross abuse of powers with ulterior motives etc. which if proved would result in the imposition of one of the three major penalties

outlined in Article 311 of the Constitution of India, the Government address itself the question whether or not the facts of the case warrant any interim action during the pendency of the enquiry. If Government deems it necessary to take interim action, it should first consider if transfer of the delinquent to another station would suffice. If, however, the Government feels that the nature of the misconduct is such that he cannot be trusted to discharge his duties for fear that he may indulge in similar activities elsewhere, he may be suspended from service. Only in those rare cases where the Government is satisfied that notwithstanding the suspension of the employee, his continued presence at the same headquarters is likely to cause or is causing embarrassment to those of his subordinates expected to testify against him during the course of enquiry or he is attempting to influence or browbeat witnesses or is otherwise trying to tamper with the evidence because of his influence or connections, at the said headquarters, the Government may resort to both, suspension and transfer.

26. Mr. Oza next argued that the impugned orders of suspension were contrary to the guidelines contained in the Government Circular dated 21-7-1982. The Circular letter merely states that where a Government servant has been trapped in the process of accepting illegal gratification and some time is likely to lapse for launching a prosecution against him in Court, it is necessary to place him beyond harm's way so that he does not attempt to destroy or tamper with evidence. After he is transferred to another place, he may be suspended. The idea behind this circular is that after a complaint is received against the civil servant and he is trapped in the process of accepting bribe his immediate transfer would be necessary to put him out of action so that he does not destroy or tamper with evidence. After investigation, if prima facie material emerges against the delinquent, he can be placed under suspension since such a delinquent be trusted to discharge duties as a public servant at any station whatsoever. We, therefore, do not think that this circular lays down that in all cases, the procedure to be followed is first transfer and then suspension. If the evidence collected for the contemplated enquiry is sufficient, the delinquent can be placed under suspension straightaway without resorting to the methodology of initial transfer and subsequent suspension. The Circular further, states that if the authority is disinclined to place a civil servant involved in such an act of misconduct under suspension the reasons for declining to do so should be stated in clear terms. The second Circular in which our attention was drawn is dated 8th May, 1984 issued by the Director General of Police. There is no reference to this Circular letter in the pleadings, but we have taken note thereof and we find that it concerns the transfer of four Police Constables outside the City of Ahmedabad. These Constables were also placed under suspension. The letter states that when an employee is placed under suspension, he should not be transferred, but his headquarters can be changed. We fail to understand how this Circular helps the petitioner.

27. For the above reasons, we do not see any merit in both the petitions. We would like to point out that although the question of exercise of administrative

powers of suspension/transfer is within the discretion of the authority charged with the duty to exercise the same, since the exercise of such powers has certain civil consequences, they should be exercised with restraint and not as a matter of course. The Government or the concerned authority should apply its mind with a view to finding out whether transfer of the delinquent would serve the purpose, having regard to the facts of the case. If the Government or the concerned authority comes to the conclusion that the facts of the case warrant the suspension of the delinquent, it may next address itself to the question whether it is necessary to change his headquarters. In doing so, it should be borne in mind that suspension and consequential fixation of subsistence allowance has financial implications and simultaneous transfer or change of headquarters adds to the woes of the delinquent as he may not be allotted Government quarters at the new station and may have to pay a substantial amount by way of rent. Having regard to the same, we feel it would be advisable to record reasons on the file bringing out, clearly why in addition to suspension, change of headquarters is necessary. Once the reasons are stated Courts would be able to better appreciate the executive action and would be loath to interfere with it. It need hardly be stated that if the reasons are stated the allegation that the executive action is arbitrary or mala fide will recede in the a or background.

28. Needless to add that the apprehension that Courts may try to weigh the reasons in golden scales and may try to substitute their own decision as if sitting in appeal, is misplaced because the function of the Court in such cases is limited to finding out whether the action is arbitrary or mala fide. It is not the function of the court to substitute its own decision in place of the decision taken by the Government or the concerned authority but if the reasons which weighed for taking the decision are before the court, it can effectively deal with the challenge made by the delinquent. Normally, courts should be slow in interfering with such administrative orders which are of a discretionary nature and if the reasons which weighed with the authority are known, it would assist the Court in dealing with the challenge directed against it. We may at the cost of repetition state that the order of suspension cum-transfer should be very sparingly passed in only those rare cases where transfer or suspension alone is not sufficient to achieve the objective of containing the delinquent's sphere of influence.

29. While we are dismissing both these petitions, we would like the Government to review the cases of both the delinquents in light of the above observations within 15 days from today and communicate its decision to the delinquents. We hope that till such decision is taken, the Government will maintain the status-quo. With these observations, we discharge the rule in both the petitions with no order as to costs.