

**(2010) 06 GAU CK 0049**  
**In the Gauhati High Court**  
**Case No : Writ Appeal No. 35 of 2009**

|                                                        |            |
|--------------------------------------------------------|------------|
| Tripura Khadi and Village Industries Board and Another | APPELLANT  |
| Vs                                                     |            |
| Ashis Kanti Saha and Another                           | RESPONDENT |

**Date of Decision :** 09-06-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226, 309, 314  
General Clauses Act, 1897 — Section 16  
Industrial Disputes Act, 1947 — Section 33, 33(1), 33A  
Penal Code, 1860 (IPC) — Section 409

**Citation :** (2011) 4 GLR 306

**Hon'ble Judges :** I.A. Ansari, J;C.R. Sharma, J

**Bench :** Division Bench

**Advocate :** S. Deb and Mr. P. Dutta, for the Appellant; P. Roy Barman, S. Bhattacharjee, Ms. N. Guha and Ms. D. Bhattacharjee, for the Respondent

**Final Decision :** Allowed

## Judgement

I.A. Ansari, J.—This appeal has arisen out of the judgment and order, dated 01.08.2009, passed, in WP(C) No. 80/2001, whereby a learned Single Judge of this Court has set aside and quashed the order, dated 06.11.99, whereby the respondent herein was placed under suspension and also the Memorandum, dated 01.02.2001. By the judgment, under appeal, the learned Single Judge has issued further direction that the appellants herein shall pay to the respondent the balance amount of subsistence allowance as per the salary, which the respondent has not been paid since the time of his suspension and that the respondent shall also be paid his salary and allowances as per the revised pay scale.

2. The facts, relevant for disposal of the appeal and discernible from the materials on record, are, in brief, thus: By Memorandum dated 06.11.1999, issued by the appellant No. 2, namely, Executive Officer, Tripura Khadi and Village Industries Board (hereinafter referred to as "the Board"), the respondent while serving as an Assistant Organizer (Khadi), was placed under suspension in contemplation of disciplinary proceeding to be drawn against him mentioning

therein that the order of suspension was based in exercise of powers conferred by sub-para 4(c) of Para 13 of the Tripura Khadi and Village Industries Board's Regulation, 1970 (hereinafter referred to as "the Regulation") making it clear that during the period of suspension, the respondent shall be entitled to half of the average pay and other allowances as may be admissible. The suspension of the respondent was followed by lodging of a First Information Report (in short, "FIR"), on 15.11.1999, by the appellant No. 2, namely, Executive Officer of the Board and, based on this FIR, West Agartala Police Station Case No. 164/ 1999, u/s 409 IPC, was registered against the respondent, the informant's allegations against the writ petitioner-respondent being that the respondent had committed criminal breach of trust by appropriating the articles, kept stored and valued at Rs. 26,46,701.80/-, while the respondent was holding the said property entrusted to him by the Board as an employee of the Board. Pursuant to the registration of the case, as described hereinbefore, the respondent was taken into custody and he remained in custody for a period of fifty-five days in connection with the said case. The respondent made a representation to the appellant No. 2, namely, Executive Officer of the Board, seeking increase in his subsistence allowance and for giving him the benefit of revised pay scale inasmuch as the pay scale, applicable to the respondent, had, in the meanwhile, been enhanced with effect from 01.01.1996. But the Executive Officer issued an order, dated 01.02.2001, conveying to the respondent to the effect that the respondent's prayer for increase, in the rate of subsistence allowance, could not be considered as the delay in initiating the departmental proceeding was directly attributable to the respondent. However, the departmental enquiry has not yet been started.

3. By filing a writ petition, under Article 226 of the Constitution of India, which gave rise to WP(C) No. 80/2001, aforementioned, the respondent herein put to challenge the order of suspension passed on 06.11.1999 and also the Memorandum, dated 01.02.2001, whereby request for increase in the respondent's subsistence allowance was declined. The respondent also prayed, in the writ petition, for a direction to be issued to the appellants herein to increase the respondent's subsistence allowance and to provide him with the benefit of revised pay scale of Rs. 5,500-10, 700/- with effect from 01.01.1996. Aggrieved by the fact that the writ petition has been allowed, as mentioned above, this appeal has been preferred.

4. We have heard Mr. S. Deb, learned Senior counsel, appearing on behalf of the appellants, and Mr. P. Ray Barman, learned counsel, appearing on behalf of the respondent.

5. The questions of law, which the present appeal has raised, are:

(i) Whether a Government employee can be suspended if the Rules framed under Article 309 of the Constitution of India and/or the regulations, governing service conditions of such a Government employee, and/or the executive or administrative instructions, issued in this regard, by the State or its

instrumentalities do not specifically make provisions for suspension of the employee? To put it a little differently, in the absence of any provisions, for placing an employee under suspension, made in the Rules, executive or administrative instructions, whether it is possible for the State or its instrumentalities, in India, to suspended its employee and, if so, subject to what limitation(s) such exercise of power is possible?

(ii) What are the different kinds of suspension?

(iii) Whether the concept of contractual relationship, which exists between an ordinary employer and employee applies also to a Government employee, in India, in matters of suspension ?

(iv) Whether, in the case at hand, the impugned order, placing the respondent herein under suspension, was a valid exercise of power ?

(v) Whether the respondent herein is entitled to the revised pay-scale as was sought to be obtained by him ?

(vi) When an employee is suspended due to the fact that a criminal case has been registered against him or is under investigation or that the employee is facing a criminal trial, whether the fact, that the criminal case has remained pending for a long time, can become the sole ground for the High Court to invoke its powers under Article 226 of the Constitution of India and, especially, when the case involves the allegation of commission of offence of moral turpitude, force the State or its instrumentalities terminate the suspension order or whether the remedy of the aggrieved employee lies, in such a case, in taking recourse to quashing and/or termination of the criminal case if the facts and circumstances of the case so warrant ?

6. In order to correctly appreciate the questions, which have arisen for determination in this appeal, the developments, in the field of law, governing suspension of a Government employee, are required to be looked into. The origin of the development of the concept of suspension, which is relevant for the purpose of disposal of this appeal, can be traced to the case of *Hanley v. Pease & Partners Limited*, reported in (1915) 1 K.B. 698. In *Hanley's* case, the facts, in brief, were that the appellant, Hanley, was a cokeman in the employment of the respondents as a quencherman at the by-product works in the coke-yard of the respondents at Bowden Close Colliery (county Durham) and worked under certain rules or customs agreed between the associations representing the owners and the workmen respectively with regard to by-product and other similar works, which formed part of the contract of service and employment between the parties. The appellant had been employed for a period of two years and he had, previously, worked on his Sunday "shift" regularly and without raising any objection to do so. The appellant did not present himself to perform the work on Sunday, June 14, 1914, on the ground that he had over slept, though all the cokemen, at the respondents' cokeyard (of which the appellant was one), had been specifically told by their foreman (acting under the

manager's instructions) that if they were ten minutes" late on coming to work, they would not be allowed to start work and the appellant believed that this condition would be enforced. The appellant was suspended on Monday, June 15, 1914, for one day, he was not paid his salary for that day, was not dismissed.

7. Two important questions, which were raised by the justices for the county of Durham, were, namely, (i) whether the appellant was wrongly suspended and (ii) whether the appellant, on being forbidden to do his work on Monday, June 15, without notice, had suffered damages to the extent of 6s. 2d. in respect of that day (i.e. Monday), the sum of 6s. 2d. being equivalent to the appellant's wages for the day. The justices of the county of Durham concluded that the suspension of the appellant was not beyond the power of his employer and the appellant was also not entitled to claim damages for not being allowed to work on Monday, June 15. Aggrieved, the appellant carried the matter in appeal, whereupon the Court held that the respondents, as master, were entitled to place the appellant, as employee, under suspension in the sense that the respondents, as employer, were entitled to forbid the appellant, as their employee, from doing the work, which had been assigned to him, inasmuch as the employee had committed breach of contract by not turning up on the appointed day, (i.e. Sunday) for discharging the duty assigned to him. Notwithstanding the fact that the appellate Court held that the respondents, as employer, were entitled to forbid the appellant, as their employee, from doing the work on Monday, June 15, 1914, the appellant Court concluded that since the terms of the contract of employment, which the parties had, did not have any provisions for placing the employee under suspension, the employer had the right to suspend his employee in the sense that the employer could have forbidden the employee from attending to his work, the employee was entitled to be paid the wage for the day, when he was so forbidden to work. For coming to this conclusion, it was pointed out by the Court that as the employee had committed breach of duty of his contract of employment by not reporting for duty on time, his service could have been terminated by the employer, but as the employer did not terminate the service of the employee and allowed him thereby to continue in his service, he ought to have been paid his due wage. The damages, in such a case, according to the Court, would be the wage, which the employee (i.e. the appellant, in Hanley's case) was entitled to, otherwise, receive for the day on which he was not allowed to work.

8. The questions involved, and the conclusions reached, in the case of Hanley (supra), as indicated above, are reproduced below:

The substantial question is : Had the appellant a claim in law for damages for breach of contract or not ? Whether the right of a master to dismiss a servant for misconduct or breach of duty or anything else of the kind is treated as a right arising out of the ordinary right of a contracting party to put an end to the contract when there has been a repudiation by the other party, or whether it is treated as a right which the master has on the ground that obedience to lawful

orders must be treated as a condition of the contract, is wholly immaterial. I do not think it is necessary to say which is the proper way to regard it, because in either view the right of the master is merely an option. The contract has become a voidable contract. The master can determine it if he pleases. Assuming that there has been a breach on the part of the servant entitling the master to dismiss him, he may, if he pleases, terminate the contract, but he is not bound to do it, and if he chooses not to exercise that right but to treat the contract as a continuing contract notwithstanding the misconduct or breach of duty of the servant, then, the contract is for all purposes a continuing contract subject to the master's right in that case to claim damages against the servant for his breach of contract. But in the present case, after declining to dismiss the workman - after electing to treat the contract as a continuing one - the employers took upon themselves to suspend him for one day; in other words to deprive the workman of his wages for one day, thereby assessing their own damages for the servant's misconduct at the sum which would be represented by one day's wages. They have no possible right to do that. Having elected to treat the contract as continuing it was continuing. They might have had a right to claim damages against the servant, but they could not justify their act in suspending the workman for the one day and refusing to let him work and earn wages. That being so, the justices in my opinion were wrong in saying that the appellant failed to substantiate his claim against the employers. I think he did substantiate a claim. Whether it be for wages or damages as represented by wages, it is unnecessary to determine. The case must be remitted to the justices with a direction to award to appellant whether or not the determination of wages or damages the sum of 6s. 2d., which represents the wages of the workman would have earned on the day he was suspended but which he did not earn owing to the employers' breach of contract.

9. Hartley's case (supra) fell for consideration in *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union*, wherein some disputes arose between the management of Hotel Imperial, New Delhi, and two other hotels, on the one hand, and their respective workmen, represented by Hotel Workers' Union, on the other, and while the disputes, with regard to the conditions of service were going on, the workmen went on strike in all the three hotels on October 5, 1955. The management of Hotel Imperial having served charge-sheet on some of the workmen, held an enquiry and having found the workmen guilty of misconduct, decided to dismiss them. This decision of the Hotel Imperial led to a general strike by the workmen of the said three hotels. Thereupon, the management of the said three hotels issued notices to the workmen to rejoin their duty within three hours making it clear that in the event of failure to do so, action would be taken against the workmen. As the workmen did not join their duty within the stipulated time, notices were issued to them afresh asking them to show cause as to why disciplinary action should not be taken against them. On October 7, 1955, the management of the three hotels issued notices to the workmen informing them that it had been decided to

dismiss the workmen and that they were being suspended pending obtaining of permission u/s 33 of the Industrial Disputes Act. The workmen, who were nineteen in number and who had been placed under suspension by the management of the Hotel Imperial, applied, u/s 33A of the Industrial Disputes Act, to the Industrial Tribunal contending that they had been suspended without pay for an indefinite period and had, thus, been punished in breach of Section 33 of the said Act. Similar disputes were raised by the workmen of the remaining two hotels. The Industrial Tribunal held that the workmen, who had applied for interim relief, should be paid their wages. The Tribunal also asked the workmen to report for duty and directed the management to take back the workmen and to keep them under employment until the time the order for interim relief, as sought for, remain in force and to pay the workmen their wages.

10. The main contentions, raised on behalf of the Hotels, as the Supreme Court noted, were two, namely, (1) are any wages payable at all to workmen, who are suspended pending permission being sought, u/s 33 of the Act, for their dismissal ?, and (2) is an Industrial Tribunal competent to grant interim relief without making an interim award, which should have been published ?

11. The contention of the management, as appellants in Hotel Imperial (supra), was that suspension of the workmen, pending permission (as had been sought for u/s 33 of the Act) imposes an absolute bar to the payment of any wages to the suspended workmen. On the other hand, it was contended, on behalf of the workmen, as respondents, that suspension of the workmen, involving non-payment of wages, is not contemplated at all under the ordinary law of master and servant in the absence of any express term in the contract of employment to that effect; and as, in all these three cases, there were, admittedly, no standing orders providing for suspension without payment of wages, it was not open to the appellants, (i.e., the management), to withhold wages as the orders of suspension, made in these cases, merely amounted to this that the employers were not prepared to take work from the workmen, yet the right of the workmen to receive wages remained intact and the employer was bound to pay the wages during the period of the so-called suspension. The Industrial Tribunal as well as the Appellate Tribunal took the view that in the absence of an express term in the contract of employment, wages could not be withheld, even though the employer might have suspended the workmen in the sense that he was not prepared to take any work from them.

12. The first question, therefore, as the Supreme Court observed, in Hotel Imperial (supra), was the extent of the power of the employer to suspend an employee under the ordinary law of master and servant. The Supreme Court held that 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 power, either as an express term in the

contract or in the rules framed under some statute, would mean that the 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 wages during the so-called 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 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. For coming to the conclusions, as indicated hereinbefore, the Supreme Court made a reference to, amongst others, the case of Hanley (supra).

13. We may pause here to point out that the Supreme Court, while laying down, in *Hotel Imperial* (supra), that in the absence of any power either in the contract of employment or in the statutory rules framed thereunder, an employee cannot be suspended and yet when he is suspended in the sense that he is forbidden to do work, which he could have, otherwise, done, the employer is bound to pay to the employee his full remuneration, pointed out that a case of dispute, between the employer and employee, which falls within the ambit of Section 33 of the Industrial Disputes Act, stands on a distinctly different footing inasmuch as an employer, even after holding a regular enquiry and on coming to, in such a case, the finding that the employee needs to be dismissed, cannot dismiss the employee without obtaining permission from the Industrial Tribunal, who may have jurisdiction u/s 33 and, hence, in such circumstances, an employer's power shall be treated to be available to the employer to suspend such an employee and in this kind of suspension, the employer would be relieved of the obligation to pay wages to the employee and the employee would be relieved of the corresponding obligation to render service(s). The Supreme Court made it clear, in *Hotel Imperial* (supra), that such a power should be read to be impliedly available to the employer under the contract of employment. To this extent, pointed out the Supreme Court, in *Hotel Imperial* (supra), the ordinary law of master and servant, as regards suspension, should be held to have been modified by the legislature by introducing Section 33. Thus, the Supreme Court held, in *Hotel Imperial* (supra), that it is only in relation to disputes, where Section 33 applies, that the employer may suspend an employee pending decision by the Industrial Tribunal on the question of granting permission to the employer to dismiss his employee and, in such a case, the employer shall have no obligation to pay wages to the employee during the period of suspension relieving thereby the employee of the corresponding obligation to render service. The relevant observations, which appear to para 8, read as under:

We have, therefore, to see whether it would be reasonable for an Industrial Tribunal where it is dealing with a case to which Section 33 of the Act applies, to imply a term in the contract giving power to the master to suspend a servant when the master has come to the conclusion after necessary inquiry that the servant has committed misconduct and ought to be dismissed, but cannot do so because of Section 33. It is urged on behalf of the respondents that there is

nothing in the language of Section 33 to warrant the conclusion that when an employer has to apply under it for permission, he can suspend the workmen concerned. This argument, however, begs the question because if there were any such provision in Section 33, it would be an express provision in the statute authorising such suspension and no further question of an implied term would arise

...

We are, therefore, of opinion that the ordinary law of master and servant as to suspension can be and should be held to have been modified in view of the fundamental change introduced by Section 33 in that law and a term should be implied by Industrial Tribunals in the contract of employment that if the master has held a proper inquiry and come to the conclusion that the servant should be dismissed and in consequence suspends him pending the permission required u/s 33. he has the power to order such suspension, thus suspending the contract of employment temporarily, so that there is no obligation on him to pay wages and no obligation on the servant to work. In dealing with this point the basic and decisive consideration introduced by Section 33 must be borne in mind. The undisputed common law right of the master to dismiss his servant for proper cause has been subjected by Section 33 to a ban; and that in fairness must mean that, pending the removal of the said statutory ban, the master can after holding a proper inquiry temporarily terminate the relationship of master and servant by suspending his employee pending proceedings u/s 33. It follows therefore that if the Tribunal grants permission, the suspended contract would come to an end and there will be no further obligation to pay any wages after the date of suspension. If, on the other hand, the permission is refused, the suspension would be wrong and the workman would be entitled to all his wages from the date of suspension.

(Emphasis supplied)

14. From the observations made above, in *Hotel Imperial* (supra), what clearly follows is that the suspension of an employee is not possible if not covered by the terms of employment or the statute or the rules framed thereunder. Nevertheless, the employer has the power not to let the employee work; but in such a case, the employee must be paid his full remuneration unless the contract of employment indicates otherwise. This apart, under the scheme of the Industrial Disputes Act, where Section 33 applies, the power to suspend an employee shall be treated to be available to the employer when, an application seeking permission to dismiss the employee is pending with the Industrial Tribunal and if, in such a case, the employee is suspended, the employer has no obligation to pay wages to the employee and the employee is also relieved of the corresponding obligation to render service.

15. The decision, it rendered, in *Hotel Imperial* (supra), fell for consideration before the Constitution Bench, in *T. Cajee Vs. U. Jormanik Siem and Another*, In

T. Cajee's case (supra), U. Jormanik, who was a Siem in the United Khasi and Jaintia Hills District, contended, by filing a writ petition, in this High Court, that once he had been appointed as a Siem, he could not have been removed from his office except through a referendum of the people according to the customs until such customs were changed by legislation passed by the District Council with the concurrence of the Governor and since no such legislation had yet been made, no power existed with the District Council to remove him from his office of the Siem. The respondent, U. Jormanik Siem, also contended that not only that he could not have even been suspended by the Executive Committee of the District Council. In this case, the High Court concluded that the power to appoint, even if it included the power to dismiss, could have been exercised by the District Council, only if there was a proper legislation. The High Court, therefore, allowed the writ petition and directed that the impugned order should not be given effect to. The matter was, then, carried to the Supreme Court. The Supreme Court, having taken into consideration the decision in Hotel Imperial (supra), observed and concluded as follows:

13. The last point that has been urged is that in any case the Executive Committee could not suspend the respondent, and reliance in this connection is placed on Management of Hotel Imperial V. Hotel Workers' Union. This Court held in that case as under:

It was 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 power either as an express term in the contract or in the rules framed under some statute would mean that the 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 wages during the so-called 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 suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

16. Not only the decision, in Hotel Imperial (supra), but also the decision, in T. Cajee's case (supra), came up for consideration in R.P. Kapur Vs. Union of India (UOI) and Another, . In R.P. Kapur's case (supra), the appellant, at the time of coming into force of the India Independence Act, 1947, was a member of the Indian Civil Service. After coming into force of the Indian Administrative Service (Recruitment) Rule, 1954, when the appellant, R.P. Kapur, had been serving in the State of Punjab, he was placed under suspension with immediate effect on the ground that a criminal case was pending against him. The suspension order also made it clear that, while under suspension, the appellant would be paid subsistence allowance, equal to leave salary, which he would have drawn under

the leave rules applicable to him, if he had been on leave on half average pay.

17. The appellant, in R.P. Kapur (supra), challenged the order of suspension by way of a writ petition in the Punjab High Court, wherein he contended that he, being originally from the Indian Civil Service, was entitled to the guarantee contained in Article 314 of the Constitution and that the order of suspension, passed against him, violated that guarantee and was, therefore, ineffective and invalid. The appellant, R.P. Kapur, relied for this purpose on Rule 49 of the Appeal Rules, which provided for suspension as a penalty. The appellant further contended that the Appeal Rules, which governed him and which, in view of the guarantee contained in Article 314, must be held to have continued to govern him, provided for suspension as a penalty only and that there was no provision anywhere in any rule or statute (immediately before January 26, 1950, on which date the Constitution came into force) providing for suspension otherwise than as a penalty. Therefore, it was not open to the Governor, contended the appellant, to suspend the appellant in the manner in which it had been done, though it was not denied that he could be suspended pending criminal proceedings provided that the suspension was as a penalty under Rule 49 of the Appeal Rules.

18. In short, what was contended, in R.P. Kapur (supra), on behalf of the appellant, before the High Court, was that since the statute had provided for suspension as penalty and there was no provision for suspension pending a criminal case, the appellant could not have been suspended. The High Court dismissed the writ petition taking the view, amongst others, that suspension, during pendency of an enquiry, was a power inherent in an employer, like the Governor, inasmuch as the power to suspend was always implied in the authority making the appointment.

19. For the purpose of disposal of this appeal, which, we are dealing with, we must point out as to what the Constitution Bench, in R.P. Kapur (supra), held as regards the question as to whether, in the absence of any express term embodied in the contract of employment or in the statute providing for suspension pending departmental enquiry or criminal proceeding, suspension of an employee is permissible. In this regard, it deserves mentioning that the Constitution Bench, in R.P. Kapur (supra), observed that it is well settled that under the ordinary law of master and servant, the power to suspend the servant, without pay, could not be implied as a term in an ordinary contract of service between the master and the servant, but must arise either from an express term in the contract itself or out of a statutory provision governing such a contract. Noticing the decisions, in Hotel Imperial (supra) and T. Cajee (supra), the Court pointed out, in R.P. Kapur (supra), that an order of interim suspension can be passed against an employee, while inquiry is pending into his conduct even though there is no specific provision to that effect in the terms of appointment or in the rules. Having held that an employer has the power to place an employee under suspension pending an enquiry in his conduct even if there is no specific provision, in this regard, in the terms of appointment or the relevant rules, the

Supreme Court clearly concluded that in a case, wherein an employee is suspended without there being any specific provision in the terms of appointment or the rules, in this regard, the employee would be entitled to his remuneration for the period of his interim suspension if there is no statute or rule existing whereunder remuneration could be withheld. In other words, in *R.P. Kapur (supra)*, the Supreme Court has pointed out, in the light of its earlier decisions in *Hotel Imperial (supra)* and *T. Cajee (supra)*, that under the ordinary law of master and servant, the servant cannot be suspended without giving him pay unless there is such an express term in the contract of employment or when the statute, governing such a contract, so provides. The Court, nevertheless, pointed out, in *R.P. Kapur (supra)*, that though it is possible to pass an order of interim suspension against an employee, while an enquiry is pending against him even if there is no specific provision made, as regards suspension, in the order of appointment or in the rules, yet, in such a case, the employee would be entitled to his remuneration for the period of his suspension if there is no statute or rule existing, whereunder the remuneration could be withheld.

20. The Supreme Court, thus, held, in *R.P. Kapur's case (supra)*, that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise out on such suspension is as regards payment of the salary and allowances of such an employee during the period of his suspension and, if there is no express term in the contract of employment providing for suspension pending departmental enquiry or if there is no statutory provision or rule in this regard, the employee is entitled to his full remuneration for the period of interim suspension. However, if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance with such a scale of pay. The Supreme Court further pointed out, in *R.P. Kapur (supra)*, that these principles will apply with equal force in a case, where the Government is the employer and a public servant is the employee subject to this modification that in view of the peculiar structural hierarchy of Government, the employer, in the case of a Government, must be held to be the authority, which has the power to appoint a public servant. On general principles, therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may, eventually, result in a departmental enquiry against him. The Supreme Court, therefore, concluded that the Government, like any other employer, would have a right to suspend a public servant in one of the two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings and this may be called interim suspension or the Government may proceed to hold a departmental enquiry and after his being found guilty, an order of suspension may be passed as a punishment if the rules so permit and this suspension will be suspension as a penalty. Having discussed the law on this subject, as indicated hereinbefore, the Court concluded, in *R.P. Kapur (supra)*, as under:

11. The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension: on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the Government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of Government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act, 10 of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Article 314 and this brings us to an investigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise.

(Emphasis is supplied)

21. We may, now, turn to the case of Balvantray Ratilal Patel Vs. The State of Maharashtra, wherein the appellant, Balvantrai Ratilal Patel, was placed under suspension following his arrest as a result of a trap, which had been laid against him on allegation having been received against him that he had demanded and

received rupees fifty-five as illegal gratification. One of the important questions, which, once again, arose in Balvantrai Ratilal Patel (supra), was whether the Government had the power to suspend the appellant, namely, Balvantrai Ratilal Patel, pending enquiry into his alleged misconduct.

22. The argument, which was put forward, on behalf of the appellant, in Balvantrai Ratilal Patel (supra), was, once again and as before, that in the absence of any express provision either in the contract of employment or in any statute or statutory rules governing such employment, there was no power to suspend a public servant pending inquiry into the allegations of his misconduct. In support of this argument, it was contended, on behalf of the appellant, that the power to suspend is not an implied term in an ordinary contract between master and servant and that such a power can only be a creature either of a statute, governing the contract, or of an express term in the contract itself. It was urged that there was no express provision in the Bombay Civil Services Rules vesting in the Government the power to suspend a Government servant pending enquiry into the allegations made against him.

23. Rejecting the above argument, the Supreme Court held, in Balvantrai Ratilal Patel (supra), that the argument, put forward on behalf of the appellant, cannot be accepted as correct. In this regard, the Supreme Court pointed out, in Balvantrai Ratilal Patel (supra), that the general law, on the subject of suspension, has been laid down by it in three of its decisions, namely, Hotel Imperial (supra), T. Cajee (supra) and R.P. Kapur (supra).

24. The Apex Court points out, in Balvantrai Ratilal Patel (supra), that 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 creature either of a statute, governing the contract, or of an express term in the contract itself. Ordinarily, thereofre, the absence of such an express term in the contract or in the rules, framed under some statute, would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee from working, he will have to pay wages during the period of such suspension, because the contractual relationship of the employer and the employee continues to subsist and though not allowed to work, the employee remains entitled to receive his remuneration without rendering service. 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. Drawing distinction between suspending the contract of service of an officer and suspending an officer from performing the duties of his office on the basis that the contract is subsisting, the Supreme Court has pointed out, in Balvantrai Ratilal Patel (supra), that suspension, in the latter sense, is always an implied term in every contract of service. When an officer is suspended in this sense, it

means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed, he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as issuing to the employee an order, which, because the contract is subsisting, the employee must obey.

25. From the observations made above, in *Balvantrai Ratilal Patel* (supra), what clearly transpires is that suspension can be as a measure of penalty and can be also in the nature of interim suspension pending a disciplinary proceeding or a criminal proceeding. In the absence of an express term in the contract of work, or in the rules framed under some statute, the employer or the Government cannot suspend its employee; but, if it is so done, in the sense that the employee is forbidden to work, he shall have to be paid his wages during the period of his suspension. However, where there is power to suspend either in the contract of employment or in the statute or the rules, 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 such remuneration as the contract of employment or the statute or rules provide.

26. From the conclusions, reached in *Balvantrai Ratilal Patel* (supra), it becomes clear that an employer can suspend an employee pending an inquiry into his misconduct and the only question that can arise, in such a case of suspension, will relate to payment during the period of such suspension. If there is no express term relating to payment during such suspension or if there is no statutory provision in any enactment or rule, in this regard, the employee is entitled to his full remuneration for the period of his interim suspension. On the other hand, if there is a term, in this respect, in the contract of employment or if there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment shall have to be made in accordance with the provisions so made and that this principle applies, with equal force, in a case, where the Government is an employer and a public servant is an employee with this qualification that in view of the peculiar structural hierarchy of the Governmental administration, the employer, in the case of employment by a Government, must be held to be the authority, which has the power to appoint the public servant concerned and that the authority entitled to appoint the public servant is entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may, eventually, result in a departmental enquiry against him, but what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or statutory rule made in that regard.

27. We may, now, turn to the case of *V.P. Gidroniya Vs. The State of Madhya Pradesh and Another*, wherein the appellant, V.P. Gidroniya, was placed under suspension pending departmental enquiry, which had been ordered against him. At the time, when the appellant was placed under suspension, he was on

probation as a Naib-Tahsildar. A show cause notice was issued to the appellant on 01.08.1964. But the appellant gave a notice to the Government terminating his service on 06.06.1964, i.e., before the show cause notice was issued. The appellant, then, approached the High Court against the notice, whereby he had been directed to show cause as to why his service should not be terminated, and sought for quashing of the order on the ground that as he was no longer in service of the Government, the Government cannot take disciplinary action against him. This writ petition was resisted by the Government on two grounds, namely, that (i) the order of the State Government suspending the appellant during the pendency of the departmental enquiry amounted to a suspension of the contract of service and, hence, the appellant could not have unilaterally terminated his service and (ii) the notice given by him, on June 6, 1964, was invalid as it did not conform to the rules. The High Court accepted the State Government's contention and dismissed the writ petition. The matter was, thereafter, carried, by way of a Special Leave Petition, to the Supreme Court.

28. The Supreme Court, V.P. Gidroniya (supra), pointed out that there are three kinds of suspension known to law and it also observed that a public servant may be suspended as a mode of punishment or he may be suspended during the pendency of an enquiry against him if the order appointing him or statutory provisions, governing his service, provide for such suspension or he may merely be forbidden from discharging his duties during the pendency of an enquiry against him and this action would also be treated as suspension. The Supreme Court further pointed out, in V.P. Gidroniya (supra), that the right to suspend, as a measure of punishment, as well as the right to suspend the contract of service, during the pendency of an enquiry, are both regulated by the contract of employment or the provisions regulating the conditions of service.

29. However, in the light of the decision in V.P. Gidroniya (supra), if the contract of employment and/or the statute, or the statutory rules do not provide for suspension pending departmental proceeding or criminal proceeding, the Government may still suspend its employee pending disciplinary or criminal proceeding by directing the employee not to render service or by forbidding its employee not to attend to his duties. In such a case, the relationship of the employer and the employee would continue to subsist between the Government and the employee and the order, forbidding the employee to attend to work, or to the duties, would, though amounts to his suspension, nevertheless, make such an employee entitled to receive such remuneration as he might have been receiving before he was forbidden from attending to the work, or his duties, unless the contract of employment or the statute or the rules framed thereunder provide for any specific pay scale for the employee, who may be placed under interm suspension. It logically follows that in the absence of any express term in the contract of employment or the statute or the rules or the regulations, it is not wholly illegal for the State or its instrumentalities to suspend its employee in the sense that the State or its instrumentalities, as the case may be, can direct its employee not to attend to his duties and discharge his function. But, in such a

case, the employee has to be paid, unless the statute, rules or regulations or the contract of employment provide otherwise, the same remuneration, which the employee was receiving before he was placed under suspension pending departmental enquiry or criminal proceeding, as the case may be.

30. The cases, which have been referred to above, fell for consideration in *Ram Lakhan & Ors. v. Presiding Officer & Ors.*, reported in (2000) 10 SCC 201, before a three Judge Bench, on the ground that there was, perhaps, some difference in the two decisions, namely, the decision, in *Hotel Imperial (supra)* and in *Fakirbhai Fulabhai Solanki Vs. Presiding Officer and Another*, in the sense that *Hotel Imperial (supra)* expressly holds an employer not liable to pay wages during the period when he suspends an employee pending Industrial Tribunal's decision on the employer's application for dismissal of the workman made u/s 33, whereas *Fakirbhai Fulabhai Solanki (supra)*, takes, perhaps, the view that an employee must be paid such wages as would be necessary to make the employee survive.

31. For better appreciation of the decision, in *Ram Lakhan (supra)*, it may be pointed out that the appellants were employees of Swatantra Bharat Mill against whom charge-sheets were issued and they were subsequently suspended. Since an industrial dispute was already pending, an application was filed by the management for permission to dismiss the employees on completion of enquiry. This application was opposed by the appellants on the ground that they were entitled to be paid subsistence allowance during the pendency of the disciplinary proceeding for the period of suspension. A preliminary issue was framed by the Tribunal and the issue read:

At what rate, if any, the Management is to pay the subsistence allowance to the workman.

The Tribunal held, referring to the decision, in *Hotel Imperial (supra)*, that appellants were not entitled to any subsistence allowance. A writ petition, filed by the appellants in the Delhi High Court against the said order of the Industrial Tribunal too, was dismissed on the ground that the Tribunal's said order was in tune with the decision in *Hotel Imperial (supra)*.

32. It was, in the background of the above facts, the matter came up, before the Supreme Court, that the decision of *Fakirbhai Fulabhai Solanki (supra)*, takes a view different from what the Court had taken in *Hotel Imperial (supra)* inasmuch as in *Hotel Imperial (supra)* (it was contended) that the employer is not obliged to pay during the period of suspension of the latter when an application made u/s 33 is pending, whereas *Ram Lakhan (supra)* came to take the view that the employer is bound to pay subsistence allowance to a suspended employee even when an application u/s 33 is pending for disposal. Referring to the decisions, in *T. Cajee (supra)*, *R.P. Kapur (supra)* and *Balvantrai Ratilal Patel (supra)*, the Supreme Court, in *Ram Lakhan (supra)*, held that these decisions lay down that an employer can suspend an employee pending an inquiry into his misconduct

and the only question that can arise in such a suspension will relate to the payment of his wages during the period of such suspension. It was further observed that the power to suspend, in the sense of a right to forbid an employee 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. The Court further observed that 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 an employer would have no power to suspend an employee and 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. The Court also came to the conclusion that an order of interim suspension can be passed against the employee, while an inquiry is pending into his conduct even though there is no such term in the contract of employment 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 could be withheld.

33. The Supreme Court has also pointed out, in *Ram Lakhan (supra)*, that the whole case-law on the subject has been reviewed in *V. P. Gidroniya (supra)*, wherein the Supreme Court has observed:

It will, therefore, be seen that where there is power conferred on the employer either by an express term in the contract or by the rules governing the terms and conditions of service to suspend an employee, the order of suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the employee is not bound to render service and the employer is not bound to pay. In such a case the employee would not be entitled to receive any payment at all from the employer unless the contract of employment or the rules governing the terms and conditions of service provide for payment of some subsistence allowance.

34. In *Ram Lakhan (supra)*, the Supreme Court has also referred to its earlier decision in *The State of Madhya Pradesh Vs. The State of Maharashtra and Others*, wherein it was laid down that an order of suspension does not put an end to the government service. It was further observed that suspension merely suspends the claim of salary as the employee is paid suspension allowance during the period of suspension. For this purpose, reliance was placed on an earlier decision of the Supreme Court in *Khem Chand Vs. Union of India (UOI)*, .

35. The Supreme Court, in *O.P. Gupta Vs. Union of India (UOI) and Others*, In *O.P. Guha (supra)*, the Supreme Court had held as under:

An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in *Khem Chand V. Union of India* is that he continues to be a member of the government service but is not permitted to work and further during the

period of suspension he is paid only some allowance - generally called subsistence allowance - which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression "subsistence allowance" has an undeniable penal significance. The dictionary meaning of the word "subsist" as given in Shorter Oxford English Dictionary, Vol. II at p. 2171 is "to remain alive as on food; to continue to exist". "Subsistence" means - means of supporting life, especially a minimum livelihood.

(Emphasis supplied)

36. In *Ram Lakhan* (supra), the Supreme Court reiterated what was laid down in *Hotel Imperial* (supra), *T. Cajee* (supra), *R P Kapur* (supra) and *Balvantrai Ratilal Patel* (supra), and, applying the principles laid down in these decisions, the Supreme Court concluded and observed thus:

Applying the principles laid down in the decisions referred to above to the facts of this case, it has to be conceded that if the Management has held a departmental enquiry against an employee, it has the right to place that employee under suspension, if on the basis of the findings recorded at the departmental enquiry, the Management is, *prima facie*, of the opinion that the employee, on account of the charges having been proved was liable to be dismissed from service, but the final order of dismissal could not be passed on account of a reference raised under the Industrial Disputes Act, 1947, which was already pending before the Tribunal. In such a situation, if the Management makes an application u/s 33(1) of the Industrial Disputes Act for permission of the Tribunal to dismiss such employee from service, the Management can, pending disposal of its application u/s 33(1), place that employee under suspension. Once the employee is placed under suspension, the Management cannot take any work from the suspended employee nor can the employee claim full salary from the Management. But the Management has to pay the subsistence allowance to the employee so that he may sustain himself till the application u/s 33(1) is finally disposed of.

37. From the above observations made, in *Ram Lakhan* (supra), it becomes clear that the above observations are in relation to an employee, who is covered by the Industrial Disputes Act and whose dismissal from service is subject to the permission, which the employer needs to obtain from an Industrial Tribunal in terms of the provisions contained in Section 33 thereof. In such a case, therefore, where Section 33 applies, even if the Management, upon holding a proper enquiry, finds its employee guilty of misconduct and liable to be dismissed, it cannot dismiss its employee unless it obtains the permission, as required u/s 33(1) of the Industrial Disputes Act, from the Industrial Tribunal. However, notwithstanding the embargo, which Section 33 places on the Management's power to dismiss its employee, the Management can, indeed, place the employee under suspension and once the employee is placed under

suspension, the Management cannot take work from the suspended employee nor can the employee claim full salary from the Management, though the Management must pay subsistence allowance to the employee so that he may sustain himself till the application u/s 33(1) is finally disposed of.

38. From the discussions held above, what crystallises and clearly transpires is that an employer can suspend an employee pending enquiry into his conduct even if there is no express term in the contract of employment in the sense that the employer may ask such an employee not to work; but, in such a case, the relationship of employer and employee would continue to survive and the employee would be entitled to receive his full remuneration during the period of suspension, i.e. during the period, when he is forbidden to do work, unless the contract of employment indicates otherwise or the statute, governing such contract of employment, provides otherwise. Similarly, in the case of a Government employee, suspension can be as a measure of penalty after an employee is found guilty of an offence or, as an interim measure pending enquiry into his misconduct, provided that the statute, rules, or regulations make such provisions. However, during the period of suspension pending completion of departmental enquiry or disciplinary proceeding, the employee shall be paid his full remuneration unless the statute, or the rules or the regulations, governing the employee's service, provide otherwise, in the form of, if necessary, reduced salary, commonly known as subsistence allowance. If the contract of employment or the statutory rules or regulations do not provide for placing an employee under suspension pending disciplinary proceeding or criminal proceeding, the Government shall have, nevertheless, as an employer, the power to suspend its employee in the sense that, it may forbid the employee from discharging his functions or duties, but, in such a case, unless the contract of employment, or the statute, or the rules, or the regulations provide otherwise, the employee must be paid his full remuneration. However, during such interim suspension, pending completion of departmental enquiry/disciplinary proceeding or criminal proceeding, the employee may be paid subsistence allowance if the contract of his employment, or the statute, or the rules, or the regulations so provide.

39. Bearing in mind the position of law, governing suspension of an employee working under a State Government, when we turn to the present appeal, we notice that the appellants, as employer, had, in the writ petitions, relied on, sub-Para 4(C) of Para 13 of the Regulations in order to trace out their power to place an employee under suspension. Having examined the Regulations, particularly, para 13 thereof, the learned Single Judge concluded that para 13 relates to termination of service and not to suspension of an employee. The Regulations, the learned Single Judge concluded, nowhere, provide for suspension of an employee of the Board in contemplation of enquiry nor is there any such administrative instruction in force in this regard. These findings of the learned Single Judge could not be assailed before us.

40. What, however, remains in dispute is this: In the absence of any specific

provision in the Regulations, empowering the Board to place its employee under suspension pending disciplinary proceeding or criminal proceeding, whether the Board stands denuded of its authority or right, as an ordinary employer, from placing its employee under suspension in the sense that the Board forbids such an employee from rendering his/her service ? Another question, which has been raised, in this writ appeal, is as to whether, in the facts and circumstances of the present case, if the Board has the power to place any of its employees under suspension by forbidding him not to attend to his duties, whether such an employee is required to be paid his salary and allowances as were available to him before the day he was placed under suspension and/ or whether there can be reduction in the quantum of salary and allowances of such an employee and, if so, to what extent such reduction is possible ? Yet another question, which has been raised in the present appeal, is as to whether the revised pay scale was validly made available to the respondent under the impugned judgment and order if the suspension was, otherwise, within the power and competence of the Board ?

41. In the case at hand, we do not find any dispute with regard to the fact that the Regulations do not make any specific provision empowering the Board to place its employees under suspension either in connection with an investigation of an offence alleged to have been committed by him or pending drawing of a disciplinary proceeding. In the light of the law, as has already been discussed above, it cannot be questioned that the Board, as an instrumentality of the State, is empowered to place an employee, such as the respondent, under suspension by forbidding him from attending to his duties. In such circumstances, when the Regulations and/or any other executive or administrative instruction, governing the service of the respondent, do not permit reduction of his pay and allowances during the period of his suspension, it logically follows that upon being asked not to attend to his duties by adopting the procedure of passing an order against him in the form of interim suspension, the respondent cannot be made to suffer denial of his right to receive his salary and allowances as may be applicable to him deeming as if he is, otherwise, entitled to his full salary and allowances.

42. Considering, therefore, the fact that a charge sheet has already been filed by the police against the respondent in connection with the criminal case aforementioned, we are clearly of the view that in the facts and circumstances of the present case, while the respondents's suspension pending further proceedings in the criminal Court, particularly, when the charge, against him is u/s 409 IPC, involving moral turpitude, does not call for interference, the respondent shall be paid, during the period of suspension, the pay and allowances, which he is, otherwise, entitled to receive under the revised pay scale.

43. What has been further pointed out, on behalf of the respondent, is that the respondent has been under suspension for the last, almost, ten years, and it is not known as to when the criminal proceeding, instituted against him, would be

concluded and, since the disciplinary proceeding has not yet been commenced, he deserves to be reinstated in service.

44. While considering the above aspect of the matter, it needs to be pointed out that the Supreme Court points out, in R.P. Kapur (supra), that the purpose of suspension, pending a departmental enquiry, is, generally, to facilitate a departmental enquiry and to ensure that while such enquiry is going on, which may relate to serious lapses on the part of a public servant, the public servant is not in a position to misuse his authority so as to adversely affect the enquiry. In such a case, suspension, pending a departmental enquiry, is a disciplinary matter and similar would be the case where order of suspension is made pending criminal proceedings. The Supreme Court has also pointed out, in R. P. Kapur's case (supra), that the usual ground for suspension, pending a criminal proceeding, is that the charge is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. In such a case, a public servant, according to the Supreme Court, may be suspended pending investigation, enquiry or trial relating to a criminal charge. The Supreme Court has further pointed out, in R. P. Kapur's case (supra), that if the trial, on a criminal charge, results in conviction, disciplinary proceedings are bound to follow against the public servant, so convicted; but in case of acquittal, proceedings may follow, where the acquittal is other than honourable. The usual practice, according to the Supreme Court, in R. P. Kapur's case (supra), is that where a public servant is being tried on a criminal charge, the Government postpones holding departmental enquiry and awaits the result of the criminal trial and departmental proceedings follow on the result of the criminal trial.

45. In the light of what has been pointed out above, it clearly transpires that when an investigation into an offence, allegedly committed by a Government employee or a trial, involving a Government employee in an offence, is pending against him (as is the case at hand), the State or its instrumentality does have the power, as already discussed above, to place its employee under suspension. It does not, however, remain within the control of the employer, in such a case, to complete either the investigation or the trial. It is, undoubtedly, within the ambit of the discretion of the employer to take a decision as to whether the employee shall be proceeded against by way of a departmental enquiry pending investigation or trial, as the case may be. There is absolutely no legal impediment, on the part of the State or its instrumentalities, to await the outcome of an investigation or trial involving such an employee. As a matter of fact, as already indicated above, the subsistence allowance is made available to an employee only to meet the situation, which arises out of his suspension pending completion of investigation or trial, as the case may be. In such a fact situation, the employer, in reality, does nothing, but awaits the outcome of the investigation or the trial, as the case may be. However, as Mr. P. Ray Barman, learned counsel for the respondent, rightly contents, it would be for the employer to determine as to whether, in a given set of facts, the employee shall or shall

not be kept under suspension pending completion of investigation or trial. However, the Court cannot, in our considered view, direct the employer to reinstate the employee merely because of the fact that the investigation or trial has been pending for a long period. The remedy of the aggrieved employee, in such a case, may lie in making appropriate application to the High Court under Article 226 of the Constitution of India for expeditious trial or speedier investigation of the case, but the employer cannot be faulted if he awaits outcome of the investigation or trial. The contention of the respondent that the Court shall direct the employer (i.e., the appellants herein) to reinstate the respondent on account of the fact that the case has not been concluded for the last ten years, cannot be accepted. In the case at hand, we find that on the basis of a charge sheet already laid by the police, there is a trial pending against the petitioner involving him in an offence involving moral turpitude and the Board is within its power not to revoke the suspension order, during the pendency of the trial. However, so long as the respondent is kept under suspension by the Board, the Board shall be bound to pay the salary and allowances of the respondent as indicated above.

46. Considering the matter in its entirety and in the interest of justice, we partly allow this appeal. We maintain the judgment and order to the extent that it sets aside the impugned Memorandum, dated 01.02.2001, whereby the respondent was denied to be paid by the Board the enhanced pay and allowances as per revised pay scale. While the order of suspension, dated 06.11.1999, issued by the Board, is not hereby interfered with, the appellants are hereby directed to pay to the respondent his salary and allowances as per the revised pay scale besides making available to him the arrears of his pay and allowances within a period of three months from the date of receipt of a copy of this order by the appellant No. 1, namely, the Board. In consequence of what we have concluded and directed hereinbefore, the impugned judgment and order shall stand set aside to the extent that the same sets at naught the impugned order, dated 06.11.1999, whereby the respondent was placed under suspension.

47. With the above observations and directions, this writ appeal shall stand disposed of.

48. No order as to cost.