

GAHC040006462023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WA/17/2023

Shri Suruj Gurung S/o Lt. Dal Bahadur Gurung
aged about 58 years, Village Mazbat, PO/PS Mazbat
District – Udalguri, Assam. Phone No. 9402272980

.....Appellant

By Advocates:

Tadup Tana Tara

Jungam Jini

Gamken Bam

Terji Kamchi

Riya Sarkar

Kirmanil Lollen

-Versus-

- 1.** The State of Arunachal Pradesh through the Chief Secretary, Government of Arunachal Pradesh, Itanagar.
- 2.** The Commissioner/Secretary(Personnel), Government of Arunachal Pradesh, Itanagar.

.....Respondents

By Advocates:

Subu Tapin, Senior Government Advocate

:::BEFORE:::

HON'BLE MR. JUSTICE NANI TAGIA
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 02-08-2023

Date of Judgment & Order: 09-08-2023

JUDGMENT & ORDER(CAV)

(N. Tagia, J.)

This intra-Court appeal has been filed by the appellant, challenging the order, dated 16.05.2023, passed by the learned single Judge in WP(c)224(AP)2023, whereby, the writ petition has been dismissed.

2. The appellant as writ petitioner, had filed WP(c)224(AP)2023, challenging the order, dated 12.10.2022, issued by the Chief Secretary to the Government of Arunachal Pradesh, Itanagar, vide Memo. No. PERS-12/17/2022/386; whereby, the petitioner who is an APSC (Selection Grade) Officer and working as Joint Secretary-cum-Controller of Examination, Arunachal Pradesh Public Service Commission(APPSC), Itanagar, has been placed under suspension in exercise of powers conferred under Sub-rule(1) of Rule 10 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965, with immediate effect on contemplation of a disciplinary proceeding against the petitioner in connection with paper leakage case of Arunachal Pradesh Public Service Commission Assistant Engineer(Civil) Examination, 2022.

Also put to challenge is the order, dated 10.01.2023, issued on 11.01.2023, by the Chief Secretary to the Government of Arunachal Pradesh, Itanagar, vide Memo. No. PERS-18012/2/2021/737, whereby, the petitioner's suspension was extended for a further period of 90 ninety days w.e.f. 11.01.2023 to 10.04.2023, in terms of Rule 10(6) of the Central Civil Services(Classification, Control & Appeal) Rules, 1965, as well as the order, dated 06.04.2023, issued on 10.04.2023, by the Chief Secretary to the Government of Arunachal Pradesh, Itanagar, vide Memo. No. PERS-18012/2/2021/1145, whereby, the petitioner's suspension period was further extended for a period of 90 days w.e.f. 11.04.2023 to 09.07.2023, in terms of Rule 10(6) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965.

3. Assailing the aforesaid suspension order and the subsequent extensions made by the State Government; the appellant/petitioner had contended that since no memorandum of charges have been served upon him before the expiry of 90 days from the date, he was initially placed under suspension; he could not have been placed under suspension by the subsequent orders of extension issued beyond 90 days.

In support of his contention; the appellant/petitioner had relied on an Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, vide No. F.NO. 11012/04/2016-Estt.(A); as well as on a decision rendered by a Single Bench of this Court in the case of ***Mirpe Tato v. State of Arunachal Pradesh & ors.***, reported in **2021(3) GLT 189**.

The contention of the appellant/petitioner did not find favour with the learned single Judge and the aforesaid writ petition being WP(c)224(AP)2023 was dismissed at the stage of motion hearing itself by holding that as the order of review of suspension and the decision to extend the same, was taken prior to the expiry of 90 days from the date of the suspension order; the contention raised by the petitioner that in the event, memorandum of charges is not served upon him within a period 90 days, the period of suspension cannot be extended beyond a period of 90 days; cannot be accepted and the writ petition was accordingly dismissed.

4. Since the writ petition was dismissed *in limini*, the respondents were directed to file an affidavit in this writ appeal vide order, dated 05.06.2023. Accordingly, the Respondents No. 1 & 2 have filed the affidavit-in-opposition, wherein, it has been contended that the extension of the suspension periods of the appellant/petitioner was made by the State Government, on recommendation of the Review Committee before the expiry of 90 days from the date, the last suspension order was issued and therefore, the extension of the suspension periods of the appellant/petitioner was made in accordance with the Rules.

In the affidavit-in-opposition filed by Respondent No. 1 & 2, it is further contended that the State of Arunachal Pradesh do not have its own service rules but follow the Central Civil Services(Classification, Control & Appeal) Rules, 1965, and other connected instructions thereof. With regard to the extension and revocation of a Government employee's suspension; it is governed by Rule 10 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965. It is true that the Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training,

Establishment A-III, have issued an Office Memorandum vide No. F.No. 11012/04/2016-Estt.(A) dated 23.08.2016, whereby, the Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, has issued instruction not to extend the suspension period of 90 days if within the said period, charge-sheet/charge memo, is not submitted. However, the Government of Arunachal Pradesh has not endorsed the same to the Department.

5. In view of the above, it is contended by the respondents No. 1 & 2, in the affidavit-in-opposition filed, that there is no such law that the extension of the suspension period of a State Government employee, cannot be made beyond 90 days even if charge-sheet/charge memo against such delinquent official is not filed within the period of 90 days.

6. We have heard Mr. Tadup Tana Tara, learned counsel for the petitioner; and Mr. Subu Tapin, learned Senior Government Advocate, appearing on behalf of Respondents No. 1 & 2.

7. Mr. Tara, learned counsel for the appellant/petitioner has argued that since no memorandum of charges has been served upon the appellant/petitioner though the appellant/petitioner was placed under suspension by an order, dated 12.10.2022; the respondent authorities could not have placed the appellant/petitioner under further suspension in view of the Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III vide No. F.NO. 11012/04/2016-Estt.(A); and the decision rendered by the single Judge of this Court in

the case of ***Mirpe Tato v. State of Arunachal Pradesh & ors.***, reported in **2021(3) GLT 189**.

Mr. Tara, learned counsel, has further argued that the learned single Judge having not set aside the order of suspension and the subsequent extensions thereof, on the ground of violation of the Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III; as well as the decision rendered in the case of ***Mirpe Tato***(supra); the learned single Judge has committed an error of law by dismissing the writ petition filed by the appellant/petitioner and the same requires interference by this Court by setting aside the order, dated 16.05.2023, passed in WP(c)224(AP)2023 by the learned single Judge and thereby, allowing the writ petition filed by the appellant/petitioner.

Mr. Tara, learned counsel, has further argued that the decision rendered by the learned single Judge in the case of ***Mirpe Tato***(supra), referred to above, has not been challenged by the Government before an appellate Court and the petitioner Shri Mirpe Tato in the case of ***Mirpe Tato***(supra) is now in service upon his reinstatement in terms of this Court's direction, and as such, the appellant/petitioner, who is similarly placed with the petitioner in the case of ***Mirpe Tato***(supra), deserves the identical treatment as had been done with the petitioner in the case of ***Mirpe Tato***(supra).

8. Mr. Tapin, learned Senior Government Advocate, on the other hand, by referring to the affidavit-in-opposition filed by the Respondents No. 1 & 2 in this appeal; has argued that after the appellant/petitioner was placed under suspension vide order, dated 12.10.2022, for a period of 90 days; the subsequent extensions of the

suspension period of the appellant/petitioner was made before the expiry of a period of 90 days, on each occasion, from the date of the last order of suspension and thereby, the appellant/petitioner has been placed under suspension in accordance with the provisions of Rule 10 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965.

Mr. Tapin, learned Senior Government Advocate has further submitted that a draft charge sheet for disciplinary proceeding against the appellant/petitioner has already been submitted to the competent authority and it is expected to be disposed of shortly. He has also submitted that though it is true that the Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, had issued an Office Memorandum, dated 23.08.2016, whereby, the Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, has issued instruction not to extend the suspension period beyond 90 days if within this period, the charge-sheet/charge memo is not submitted; the Government of Arunachal Pradesh, however, has not endorsed the same to its Departments.

Mr. Tapin, learned Senior Government Advocate, has also argued that since the suspension of the appellant/petitioner and the subsequent extensions thereof, have been made in terms of Rule 10 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965, even if the Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, provided that suspension period cannot extend beyond 90 days if the charge-sheet/charge memo is not submitted within 90 days from the date of suspension; the extension of the

suspension of the appellant/petitioner beyond the period of 90 days would be justified even if no memorandum of charges has been furnished to the appellant/petitioner within a period of 90 days from the date of suspension.

In support of his contention that the Act to prevail on statutory rules and the statutory rules to prevail on the executive instructions in the case of any conflict but instructions which are supplementary to the Act or the Rules are binding, Mr. Tapin, learned Senior Government Advocate, has relied on a decision of the Hon'ble Supreme Court in the case of ***Union of India & ors. v. Somasundaram Viswanath & ors.***, reported in ***(1989) 1 SCC 175***.

Mr. Tapin, learned Senior Government Advocate, has, however, admitted that the decision rendered by the learned single Judge in the case of ***Mirpe Tato***(supra) has not been challenged by the Government before an appellate Court and the petitioner Shri Mirpe Tato in the case of ***Mirpe Tato***(supra), is now in service upon his reinstatement in compliance of this Court's order. Thus, the correctness of the decision rendered in the case of ***Mirpe Tato***(supra), on the basis of the Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, by the single Bench of this Court; has been accepted by the Government.

9. Rival contentions advanced by the learned counsels appearing for the parties have received due consideration of the Court and the materials placed on record have been perused.

10. Upon hearing the contentions advanced by the learned counsels appearing for the parties; it is noticed that the appellant/petitioner who is an APCS(Selection Grade) Officer, serving as Joint Secretary-cum-Controller of Examination, Arunachal Pradesh Public Service Commission(APPSC), Itanagar, was placed under suspension in connection with the paper leakage case of Arunachal Pradesh Public Service Commission Assistant Engineer(Civil) Examination 2022, in contemplation of a disciplinary proceeding vide order, dated 12.10.2022, issued by the Chief Secretary to the Government of Arunachal Pradesh, under Memo. No. PERS-12/17/2022/386, in exercise of power conferred under Sub-rule 1 of Rule 10 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965.

The suspension of the appellant/petitioner was extended for a period of 90 days w.e.f. 10.01.2023 to 10.04.2023, vide order, dated 10.01.2023, issued on 11.01.2023, by the Chief Secretary to the Government of Arunachal Pradesh, Itanagar, under Memo. No. PERS-18012/2/2021/737, in exercise of power conferred under Rule 10(6) of the Central Civil Services(Classification, Control & Appeal) Rules, 1965; which was again extended by yet another order, dated 06.04.2023, issued on 10.04.2023, by the Chief Secretary to the Government of Arunachal Pradesh, Itanagar, under Memo. No. PERS-18012/2/2021/ 1145, for a period of 90 days w.e.f. 10.04.2023 to 09.07.2023.

From the affidavit-in-opposition filed by the Respondents No. 1 & 2; it is also noticed that the memorandum of charges is yet to be furnished to the appellant/petitioner as only a draft charge-sheet is stated to have been submitted to the competent authority.

11. Under the aforesaid circumstances, the writ petition was filed by the appellant/petitioner challenging the order of suspension, dated 12.10.2022, and the subsequent extensions, dated 11.01.2023 and 10.04.2023, issued by the Chief Secretary to the Government of Arunachal Pradesh, Itanagar, placing the appellant/petitioner under suspension.

Challenging the aforesaid orders of suspension; the appellant/petitioner had relied on the Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, vide No. F.NO. 11012/04/2016-Estt.(A), to contend that if the memorandum of charges is not served upon the suspended Officer before the expiry of 90 days from the initial suspension order; the initial suspension order cannot be extended beyond 90 days. The appellant/petitioner, therefore, contended in the writ petition, that since no memorandum of charges has been served upon the appellant/petitioner within a period of 90 days from the date of his initial suspension on 12.10.2022; the suspension order of the appellant/petitioner and the subsequent extensions thereof, was liable to be set aside and quashed.

In support of his contention, the appellant/petitioner appears to have placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India**, reported in **(2015) 7 SCC 291**, as well as on the decisions of this Court rendered in the case of **Mirpe Tato v. State of Arunachal Pradesh & ors.** reported in **2021(3) GLT 189** and in the case of **Rakibuddin Ahmed v. State of Assam & ors.**, reported in **(2020) 2 GLR 621**.

The contention of the appellant/petitioner, however, did not find favour with the learned single Judge and the learned single Judge dismissed the aforesaid writ petition being WP(c)224(AP)2023 vide order, dated 16.05.2023, by holding that since the review of the suspension and the extension orders thereof, having been issued before the expiry of 90 days from the date of order of the suspension; the continuance of the appellant/petitioner under suspension, was justified.

12. The Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, referred to above; came up for adjudication before this Court in the case of **Mirpe Tato**(supra).

13. In the case of **Mirpe Tato**(supra), though the issue raised for determination was whether the order of suspension of the petitioner Shri Mirpe Tato, was reviewed by the respondent authorities as per the provision of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965; but the learned counsel for the petitioner had produced before the Court, the Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, to contend that since the memorandum of charges have not been served upon the petitioner within a period of 90 days from the date of his initial suspension; the petitioner Shri Mirpe Tato, cannot be placed under further suspension. That is how the Office Memorandum, dated 23.08.2016, came up for adjudication before a single Bench of this Court in the case of **Mirpe Tato**(supra), wherein, a single Bench of this Court, in paragraphs No. 6, 7, 8, 9 & 10, has held, as under:

"6. On the rival pleadings of the parties, what ought to have been adjudicated by this Court in the instant case was as to whether the order of suspension of the petitioner was reviewed by the respondent authorities in accordance with law as provided under CCS (CCA) Rules, 1965. However, when this matter was heard on 09.02.2021 Mr. Tara, learned counsel for the petitioner had produced an Office Memorandum dated 23.08.2016 issued by the Director (E), Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, Establishment A-III Vide No. F.NO./11012/04/2016-Estt.(A) to contend that in view of the judgment rendered by the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary-vs-Union of India, in Civil Appeal No.1912 of 2015 dated 16.02.2015, the Government has decided that when a Govt. servant is placed under suspension, the order of suspension should not extend beyond 3 (three) months. If within this period, the Charge-Sheet is not served upon the charged officer, the order of suspension should not extend beyond 3 (three) months. As the Office Memorandum dated 23.08.2016 was not a part of the pleading, Mr. Tapin, learned Sr. Govt. Advocate was handed over a copy of the said Office Memorandum to provide him an opportunity to receive instruction from the respondents whether this Office Memorandum dated 23.08.2016 produced by the learned counsel for the petitioner is applicable to the employees of the State of Arunachal Pradesh. Today Mr. Tapin, learned Sr. Govt. Advocate, on instruction received from the respondent authorities submits that the said Office Memorandum dated 23.08.2016 is applicable to the employees of the Government of Arunachal Pradesh and no subsequent Office Memorandum have come to the light of the State respondents superseding the Office Memorandum dated 23.08.2016 referred to hereinabove.

7. The Office Memorandum dated 23.08.2016 issued by the Director (E), Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, Establishment A-III Vide No. F.NO./11012/04/2016-Estt.(A) is quoted hereinbelow:-

F. No. 11012/04/2016-Estt.(A)

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel & Training

Establishment A-III Desk

North Block, New Delhi — 110001

Dated August 23, 2016

OFFICE MEMORANDUM

Subject: Central Civil Services (Classification, Control and Appeal) Rules, 1965 - instructions regarding timely issue of Charge-sheet - regarding.

The undersigned is directed to refer to DoP&T's O.M. No. 11012/17/2013-Estt.A-III dated 3rd July, 2015 on the above mentioned subject and to say that in a recent case, Ajay Kumar Choudhary vs Union of India Civil Appeal No. 1912 of 2015 dated 16/02/2015, the Apex Court has directed as follows:

"14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Charge sheet is not served on the delinquent officer/employee if the Memorandum of Charges/Charge sheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

2. In compliance of the above judgement, it has been decided that where a Government servant is placed under suspension, the order of suspension should not extend beyond three months, if within this period the charge-sheet is not served to the charged officer. As such, it should be ensured that the charge sheet is issued before expiry of 90 days from the date of suspension. As the suspension will lapse in case this time line is not adhered to, a close watch needs to be kept at all levels to ensure that charge sheets are issued in time.

3. It should also be ensured that disciplinary proceedings are initiated as far as practicable in cases where an investigating agency is seized of the matter or criminal proceedings have been launched. Clarifications in this regard have already been issued vide O.M. No. 11012/6/2007-Estt.A-III dated 21.07.2016.

4. All Ministries/Departments/Offices are requested to bring the above guidelines to the notice of all Disciplinary Authorities under their control.

5. Hindi version will follow.

(Mukesh Chaturvedi)

Director (E)

Tel: 23093176

8. From perusal of Paragraph-2 of the Office Memorandum referred to hereinabove, it is noticed that in compliance of judgment passed in Ajay Kumar Choudhary (Supra) in Civil Appeal No.1912 of 2015 dated 16.02.2015, it has been decided by the Government that when a Govt. servant is placed under suspension, the order of suspension should not extend beyond 3 (three) months and if within the period of 3 (three) months, the Charge-Sheet is not served to the Charged Officer, the suspension order of the officer should not be extended beyond 3 (three) months.

9. In the instant case, the petitioner was put under suspension for the first time by an order dated 13.02.2018 whereafter, the same was reviewed from time to time. The Memorandum of Charges dated 27.05.2019 admittedly was served upon the charged officer/petitioner only on 08.06.2019. Therefore, what has been noticed in the instant case is that the Memorandum of Charges to the petitioner in the instant case was not served upon him within a period of 3(three) months from the date of suspension of the petitioner on 13.02.2018.

10. In that view of the matter, if the Office Memorandum dated 23.08.2016, referred to hereinabove, is to be applied in the instant case, which Office Memorandum is stated to be applicable to the employees of the Government of Arunachal Pradesh, the continuation of the suspension of the petitioner would be contrary to the Office Memorandum dated 23.08.2016, referred to hereinabove. Therefore, the issue raised in the writ petition and the counter affidavit filed by the State respondents was different, yet, this writ petition deserves to be allowed on the basis of Office Memorandum dated 23.08.2018, which I do hereby. Resultantly, the respondent authorities shall reinstate the petitioner in service with all consequential benefits, if any, in accordance with law."

14. On perusal of the decision rendered in the case of ***Mirpe Tato***(supra), as quoted hereinabove; it is noticed that the Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, provides that in compliance of the judgment rendered by the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary in Civil Appeal No. 1912 of 2015, dated 16.02.2015, it has been, *inter alia*, decided that where a Government servant is placed under suspension, the order of suspension should not extend beyond 3(three) months if within this

period, the charge-sheet is not served to the charged Officer. As such, it should be ensured that the charge-sheet is served before the expiry of 90 days from the date of suspension. As the suspension will lapse, in case, this time-line is not adhered to, a close watch should be kept at all levels to ensure that charge-sheets are issued in time.

15. During the course of hearing in the case of ***Mirpe Tato***(supra), it appears, the learned counsel, therein, had produced the aforesaid Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, vide No. F.NO. 11012/04/2016-Estt.(A), to contend that since no memorandum of charges has been served upon the petitioner therein, even after the lapse of 90 days of suspension; the petitioner, therein, could no longer be placed under suspension by the order of extension of suspension thereof.

16. As the Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, was not a part of the pleading in the case of ***Mirpe Tato***(supra); the learned Senior Government Advocate who had represented the State Government therein, was handed-over a copy of the aforesaid Office Memorandum, dated 23.08.2016, to provide him an opportunity to receive instruction from the State Respondents whether the Office Memorandum, dated 23.08.2016, was applicable to the employees of the State of Arunachal Pradesh. Thereafter, the learned Senior Government Advocate, on instruction, received from the State authorities, submitted that the Office Memorandum, dated 23.08.2016, was

applicable to the employees of the Government of Arunachal Pradesh and no subsequent Office Memorandum have come to the light of the State authorities superseding the Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, vide No. F. NO. 11012/04/2016-Estt. (A).

17. The Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III; in paragraph No. 2 thereof, *inter alia*, provides that in compliance of the judgment passed by the Hon'ble Supreme Court in the case of Ajay Kr. Choudhary, in Civil Appeal No. 1912 of 2015, dated 16.02.2015, it has been decided by the State Government that where a Government servant is placed under suspension, the order of suspension should not extend beyond 3(three) months, if within this period of suspension, the charge-sheet is not served to the charged officer.

18. The petitioner Shri Mirpe Tato, in the case of ***Mirpe Tato***(supra), was placed under suspension for the first time by an order, dated 13.02.2018, whereafter, the same was reviewed from time to time but the memorandum of charges was finalized only on 27.05.2019, which was served upon the charged Officer/petitioner/Shri Mirpe Tato only on 08.06.2019. In that view of the matter; as the memorandum of charges was found to have not been served upon the petitioner Shri Mirpe Tato within 3(three) months from the date of suspension of the petitioner Shri Mirpe Tato, on 13.02.2018, the continuation of the suspension of the petitioner Shri Mirpe Tato was interfered

with by the Court on being found to be contrary to the Office Memorandum, dated 23.08.2016, and the writ petition was allowed, directing the State authorities to reinstate the petitioner Shri Mirpe Tato in service, with all consequential benefits, if any, in accordance with law as the learned Senior Government Advocate, on instruction, had submitted that the Office Memorandum, dated 23.08.2016, was applicable to the employees of the Government of Arunachal Pradesh, who have been placed under suspension.

19. Thus, in the proceeding held in WP(c)143(AP)2020 [Shri Mirpe Tato v. State of Arunachal Pradesh & ors.]; it was the unequivocal and categorical stand of the State authorities that the Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, vide No. F.NO. 11012/04/2016-Estt.(A), is applicable to the employees of the Government of Arunachal Pradesh who have been placed under suspension.

20. In the instant case, since the writ petition being WP(c)224(AP)2023 filed by the appellant/petitioner, was disposed of at the stage of motion hearing by the learned single Judge and no affidavit-in-opposition was filed by the State Respondents, the Respondents No. 1 & 2, herein, have filed the affidavit-in-opposition in the present proceeding, wherein, it is contended that the suspension of the appellant/petitioner and the subsequent extensions thereof, was made in accordance with the provisions of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. It has been further contended that though it is true that Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, had issued the

Office Memorandum, dated 23.08.2016, whereby, the Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, has issued instruction not to extend the suspension period of 90 days if within the said period, the charge-sheet/memorandum of charges is not served to the charged Officer; the Government of Arunachal Pradesh, however, has not endorsed the same to its Departments.

21. The contention of the Respondents No. 1 & 2 in the affidavit-in-opposition filed in this proceeding that the Office Memorandum, dated 23.08.2016, though issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, but, the Government of Arunachal Pradesh has not endorsed the same to its Departments; is found to be contrary to the earlier stand of the Government of Arunachal Pradesh taken in the case of **Mirpe Tato**(supra) that the Office Memorandum, dated 23.08.2016, is applicable to the employees of the Government of Arunachal Pradesh who have been placed under suspension.

22. It has been submitted by the learned Senior Government Advocate that no appeal has been preferred by the State against the order of the single Bench of this Court passed in the case of **Mirpe Tato**(supra) and the petitioner in that writ petition, Shri Mirpe Tato, has been reinstated in service pursuant to the order passed by the single Bench of this Court in the case of **Mirpe Tato**(supra) and the petitioner therein, Shri Mirpe Tato, is now in service pursuant to his reinstatement.

23. Though Rule 10(1)(2)(6)&(7) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, may permit extension of suspension period of an employee beyond 90 days provided such an extension of the suspension order has been made before the expiry of 90 days by the competent authority on the recommendation of the Review Committee constituted for the purpose and the appellant/ petitioner in the instant case, may have been placed under suspension beyond 90 days in terms of the provisions of Rule 10 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965; the issue which has caught the attention of this Court for determination is not whether the appellant/petitioner's suspension has been extended as per the provision of the Central Civil Services(Classification, Control & Appeal) Rules, 1965; but, whether the State authorities can be permitted to take a contrary stand on the same set of facts situation involving suspension of its employees. In other words, when the State authorities had taken an unequivocal and categorical stand in the proceeding held in the case of **Mirpe Tato**(supra) that the Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, vide No. F.NO. 11012/04/2016-Estt.(A), is applicable to the employees of the Government of Arunachal Pradesh who have been placed under suspension; can the State authorities now be permitted to take a contrary stand in the instant proceeding as it has been taken in the affidavit-in-opposition filed by the Respondents No. 1 & 2 that the Office Memorandum, dated 23.08.2016, though has been issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, but, the Government of Arunachal Pradesh has not endorsed the same to its Departments.

24. It, therefore, is also not an issue of the Act to prevail on the statutory rules and the statutory rules to prevail on the executive instructions in the case of any conflicts as is sought to be contended by the learned Senior Government Advocate which is a well-settled proposition of law but the core issue that has surfaced for determination in the instant case is whether the State authorities in the case of **Mirpe Tato**(supra) having taken an unequivocal and categorical stand that the Office Memorandum, dated 23.08.2016, is applicable to the employees of the Government of Arunachal Pradesh who have been placed under suspension and that pursuant to such stand of the State authorities, on the direction of this Court passed in the case of **Mirpe Tato**(supra), for reinstatement of the petitioner therein, on being found that no memorandum of charges was served upon him within a period of 3(three) months from the date of his suspension in terms of Clause 2 of the Office Memorandum, dated 23.08.2016 and the petitioner therein, having been reinstated in service in compliance of the direction of this Court based on the Office Memorandum, dated 23.08.2016; should this Court allow the State authorities, in the instant case, to take a contrary stand that the Office Memorandum, dated 23.08.2016, was not endorsed by the Government of Arunachal Pradesh to its Departments thereby denying the appellant/petitioner, who is, otherwise, found to be similarly situated as that of the petitioner in the case of **Mirpe Tato**(supra) insofar as non-furnishing of the memorandum of charges within a period of 90 days from the date of suspension and the applicability of the Office Memorandum, dated 23.08.2016.

25. In the case of **Mirpe Tato**(supra); the petitioner was placed under suspension on 13.02.2018, with subsequent extensions thereof, after the same was reviewed from time to time and the memorandum of charges was served upon the appellant/petitioner therein, only, on 08.06.2019, much beyond the period of 90 days.

26. In the instant case, the appellant/petitioner was placed under suspension w.e.f. 12.10.2022, vide order, dated 12.10.2022, issued by the Chief Secretary to the Government of Arunachal Pradesh, Itanagar, under Memo. No. PERS-12/17/2022/386, which was extended for a further period of 90 days w.e.f. 11.01.2023 to 10.04.2023, vide order, dated 10.01.2023, issued on 11.01.2023, by the Chief Secretary to the Government of Arunachal Pradesh, Itanagar, under Memo. No. PERS-18012/2/2021/737, and again extended for a period of another 90 days w.e.f. 11.04.2023 to 09.07.2023 vide order, dated 06.04.2023, issued on 10.04.2023, by the Chief Secretary to the Government of Arunachal Pradesh, Itanagar, under Memo. No. PERS-18012/2/ 2021/1145.

27. Though the appellant/petitioner was initially placed under suspension on 12.10.2022, as stated-above; but, in the affidavit-in-opposition filed by the Respondents No. 1 & 2 in paragraph No. 4.iv., it has been stated that a draft charge-sheet for disciplinary proceeding against the appellant/petitioner has already been submitted to the competent authority which goes to indicate that the memorandum of charges was not served upon the appellant/petitioner till the date of filing of the affidavit-in-opposition by the Respondents No. 1 & 2 which was filed on 28.07.2023. Accordingly, the appellant/petitioner, in the instant case, has also not been served with the memorandum of charges within a period of 90 days from the date, he was initially placed under suspension, like the petitioner in the case of **Mirpe Tato**(supra).

28. The appellant/petitioner and the petitioner in the case of **Mirpe Tato**(supra), therefore, are similarly situated persons insofar as non-furnishing of the memorandum of charges within a period of 90 days from the date, they were placed under

suspension by the State authorities.

29. As have been discussed hereinabove that the petitioner in the case of ***Mirpe Tato***(supra), has been reinstated in service by the State authorities in terms of the direction of this Court passed in the writ petition which was based on the unequivocal and categorical stand taken by the Government that the Office Memorandum, dated 23.08.2016, is applicable to the employees of the Government of Arunachal Pradesh who have been placed under suspension, which order of this Court passed in the case of ***Mirpe Tato***(supra), has been accepted and implemented by the Government of Arunachal Pradesh without preferring any appeal against the order passed by the single Bench of this Court in WP(c)143(AP)2020 [*Mirpe Tato v. State of Arunachal Pradesh & ors.*]; we are of the considered view that the State authorities, in the instant case, cannot be permitted to take a contrary stand as is sought to be done in the affidavit-in-opposition filed by the Respondents No. 1 & 2 that the Office Memorandum, dated 23.08.2016, has not been endorsed by the Government to its Departments inasmuch as the appellant/petitioner has been found to be similarly situated with the petitioner in the case of ***Mirpe Tato***(supra).

30. Allowing the State authorities to contend at this stage that the Office Memorandum, dated 23.08.2016, was not endorsed by the Government to its Departments and that the Office Memorandum, dated 23.08.2016, is contrary to the provision of the Central Civil Services(Classification, Control & Appeal) Rules, 1965, as is sought to be contended by the learned Senior Government Advocate; would result in an unequal and discriminatory treatment at the hands of the State authorities to the same set of persons who are similarly placed, namely, the appellant/petitioner, herein,

and the petitioner in the case of ***Mirpe Tato***(supra), attracting the vice of Article 14 of the Constitution of India which provides that the State shall not deny to any person equality before the law or equal protection of the law within the territory of India.

31. The principle is the certainty of law which is an essential aspect of the rule of law. The State must indicate with legal certainty the norms and the benchmarks. Once, the norms and the benchmarks have been indicated by the State authorities with certainty and the citizens have acted on the basis of such indication of the norms and the benchmarks by the State authorities; it cannot be permitted to the State authorities to say that this summer is very hot.

32. The stand that the State Respondents have taken in the affidavit-in-opposition filed in the instant proceeding and the contention raised by the learned Senior Government Advocate in the instant case, may have merited consideration of this Court had the State preferred an appeal against the order passed by the single Bench of this Court in the case of ***Mirpe Tato***(supra). But the absolutely opposite and contrary stand taken by the State Respondents in the affidavit-in-opposition filed and the absolutely opposite and contrary arguments advanced by the learned Senior Government Advocate in the instant case, who himself had represented the State in the case of ***Mirpe Tato***(supra), if allowed to be raised in the manner, it has been raised and accepted by this Court; the result of such an acceptance would be that the appellant/petitioner would be denied the applicability of the Office Memorandum, dated 23.08.2016, and thereby, the appellant/petitioner would continue to be placed under suspension whereas the petitioner in the case of ***Mirpe Tato***(supra) stands already reinstated in service and is now in service in terms of the order of this Court

passed in WP(c)143(AP)2020, on the basis of the Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III. In such an event, it will result in an unequal and discriminatory treatment at the hands of the State authorities to the same set of persons who are similarly situated, namely, the appellant/petitioner herein, and the petitioner in the case of **Mirpe Tato**(supra), both of whom were placed under suspension but the memorandum of charges was not served upon them within a period of 90 days as contemplated under Office Memorandum, dated 23.08.2016.

33. The constitutional Government and the learned counsel representing the constitutional Government, therefore, cannot be permitted to take such a contrary stand in the identical facts situation. Such a contrary stand taken by the Government established under the Constitution and the contrary arguments/contentions advanced by the learned counsel representing the Government established under the Constitution, who himself had represented the State in the case of **Mirpe Tato**(supra), cannot receive the judicial approval of this Court and the same needs to be deprecated, which, we do hereby, for the reason that the State cannot deny to any person equality before the law or the equal protection of law within the territory of India, as provided under Article 14 of the Constitution of India. Casualty, in such a situation, would be the "certainty of law" which is basic to the Rule of law in a Constitutional Democracy.

34. For the reasons and discussions made hereinabove; we are of the considered view that the impugned order, dated 16.05.2023, passed by the learned single Judge

in WP(c)224(AP)2023, requires interference of this Court. Accordingly, the impugned order, dated 16.05.2023, passed by the learned single Judge in WP(c)224(AP)2023, is hereby set aside and quashed. The writ petition being WP(c)224(AP)2023 is hereby allowed by providing that the appellant/petitioner can no longer be placed under suspension any further in connection with the paper leakage case of Arunachal Pradesh Public Service Commission Assistant Engineer(Civil) Examination, 2022, by the State Respondents for non-furnishing of the memorandum of charges to the appellant/petitioner within a period of 90 days from the date of initial suspension in terms of the Office Memorandum, dated 23.08.2016, issued by the Director(E), Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Establishment A-III, vide No. F. NO. 11012/04/2016-Estt. (A).

35. Consequent upon allowing the writ petition being WP(c)224(AP)2023; we hereby direct the respondent authorities to reinstate the appellant/petitioner, herein, in service, forthwith, with all consequential benefits, if any, in accordance with law.

36. The instant writ appeal accordingly stands allowed and disposed of. However, there shall be no order as to costs.

JUDGE

JUDGE

Comparing Assistant