AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 490 of 2019

{Arising out of order dated 20.08.2019 passed by the learned Single Judge in WPS No. 6251 of 2019}

- Gorelal Thakur S/o Late Ramadhin Singh Thakur, Aged About 58 Years R/o "ShiveshSadan", In Front of Balaji Temple, Main Road Kota, Raipur Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Department of Tourism, Mahanadi Bhawan, Mantralaya, Naya Raipur District - Raipur Chhattisgarh.
2. Chhattisgarh Tourism Board, Through Its Managing Director, Udyog Bhawan, Second Floor, Ring Road - 1, Telibandha Raipur Chhattisgarh.
3. Bhim Singh Managing Director, C.G. Tourism Board Udyog Bhawan, Second Floor, Ring Road - 1, Telibandha Raipur Chhattisgarh. At Present Commissioner Housing Board Raipur Chhattisgarh.

---- Respondents

For Appellant	:	Shri Prafull N. Bharat, Advocate.
For Respondent No.1/State	:	Shri Gagan Tiwari, Deputy Government Advocate.
For Respondent No.2 & 3	:	Shri Ashish Shrivastava, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge
Judgment on Board

P. R. Ramachandra Menon, Chief Justice

14.11.2019

1. Whether a government employee, whose service has been lent by the Lending Department to a Borrowing Department on deputation, can be placed under suspension, if circumstances so warrant, only by the Borrowing Department or whether the power could be exercised by the Parent Department, is the question mooted in this appeal.

2. The appeal arises from the judgment dated 20.08.2019 passed by the learned Single Judge in WPS No. 6251 of 2019, whereby the challenge raised by the writ Petitioner/Appellant to the effect that Annexure P/1 order of suspension was bad in all respects, insofar as the power was exclusively conferred upon

the Borrowing Authority and not on the Lending Authority was repelled. It was held that the power under Rule 20 of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (in short 'the Rules, 1966') was only an 'enabling provision' and that it does not say anything with regard to the absence of power of the Lending Authority/Appointing Authority. This made the Writ Petitioner to feel aggrieved, who is before this Court challenging the correctness and sustainability of the verdict passed by the learned Single Judge.

3. We heard Shri Prafull N. Bharat, the learned counsel appearing for the Appellant, Shri Gagan Tiwari, the Deputy Government Advocate representing the State and Shri Ashish Shrivastava, the learned counsel representing the Respondent No.2/Chhattisgarh Tourism Board (the Lending Authority/ Appointing Authority).

4. The genesis of the case is such that the Appellant herein was appointed originally as an employee of the Madhya Pradesh Industrial Development Corporation and after the formation of the State of Chhattisgarh and allocation of the service of the Appellant to this State, he came to be appointed under the Chhattisgarh Industrial Development Corporation and was occupying the slot as Assistant Engineer. While so, he was sent on deputation to the Chhattisgarh Tourism Board on 01.09.2005 and later, he was absorbed as a permanent employee of the Chhattisgarh Tourism Board on 19.02.2008. While working there in the capacity of Executive Engineer, the service of the Appellant was lent on deputation to the Indira Gandhi Krishi Vishwavidyalaya, as per the order passed by the second Respondent; pursuant to which he went and joined the service in the said University and was discharging his functions as above. It is the case of the Appellant that, in the course of service on deputation as above, he had to take some stringent action against a contractor, by name M/s R.D. Constructions. Later, the Appellant was repatriated to the Chhattisgarh Tourism

Board as per order dated 10.12.2015; which was sought to be challenged by the Appellant by filing Writ Petition (S) No. 4881 of 2015. By virtue of the interim order of stay granted by this Court, the Appellant was remaining in the service of the University. While so, a writ of *quo warranto* was filed by the Contractor-Company as WPS No. 888 of 2016, questioning the continuance of the Appellant in the University, which came to be dismissed by this Court holding that the Petitioner-Company had no '*locus standi*' to file the writ petition. Though an appeal was filed as Writ Appeal No. 278 of 2016, it came to be dismissed and the matter ended up there.

5. While so, the Appellant was booked in respect of commission of some offences under the Prevention of Corruption Act, 1888 in January 2016. Later, as per the proceedings dated 26.05.2016, the University denuded the Appellant from the administrative and financial powers, which however came to be restored because of the intervention made by the Government as per order dated 26.07.2019, based on some representations preferred by the Appellant. However, referring to registration of a criminal case against the Appellant (also involving offences under the Prevention of Corruption Act), the 2nd Respondent/ Chhattisgarh Tourism Board (Parent Department/Lending Department) placed the Appellant under suspension as per order dated 05.08.2019. This was sought to be challenged by the Appellant by filing WPS No. 6251 of 2019; mainly contending that there was no power or jurisdiction for the Lending Department to have placed the writ Petitioner/Appellant under suspension, as the power was exclusively vested upon the Borrowing Department, in terms of the Rule 20 of the Rules, 1966. The said contention was repelled by the learned Single Judge, holding that the power under Rule 20 of the Rules, 1966 was only an enabling provision and that it would not denude the powers of the Lending Department who was the appointing authority. It was accordingly, that the writ petition was dismissed, which is under challenge in this appeal.

6. The learned counsel representing the State and the learned Standing counsel representing the Respondent-Board submits that there is absolutely no basis for the case projected by the Appellant with reference to the scope of Rule 20 of the Rules, 1966. The power to place an employee under suspension, pending disciplinary action and to impose any 'major penalty' including dismissal, stands exclusively conferred upon the Appointing Authority. The power to suspend is clearly stipulated under Rule 9 of the Rules, 1966. It is pointed out that Rule 20 is only a supplementary provision, dealing with a situation when the service is let out to any Borrowing Department, so as to maintain the discipline. It is also pointed out that, Rule 20 specifically says the circumstance and extent to which the Borrowing Department can go on, with intimation to the Lending Department. If at all any 'major punishment' is to be imposed, the employee has to be repatriated to the Lending Department and it is for the Lending Department to impose such punishment after completing the procedural formalities. The question with regard to the power of the Lending Department, as against the power of the Borrowing Department, in the matter of suspension of an employee sent on deputation had come up for consideration before the Apex Court and it has been answered in favour of the State/Revenue as borne by the decision reported in ***Khemi Ram v. The State of Punjab***, 1976 3 SCC 699.

7. The learned counsel for the Petitioner submits that the decision rendered by the Apex Court in ***Khemi Ram*** (supra) is on a different footing and it is clearly distinguishable. In the said case, a request was made by the Lending Department to the Borrowing Department to repatriate the employee concerned to the Parent Department, whereupon the Borrowing Department intimated that the employee had proceeded on long leave, preparatory to retirement. This made the Lending Department to place a further request to cancel the leave, simultaneously placing the employee under suspension with intent to proceed

with further steps. This right was asserted by the Apex Court and hence it is contended that the said decision, as such, does not support the 2nd Respondent / authority who passed the suspension order in the instant case. The learned counsel made a further submission that the case projected by the Appellant is supported by the ruling rendered by the Supreme Court in ***Union of India v. Rajiv Kumar*** (2003) 6 SCC 516; with specific reference to paragraphs 18 to 24. The learned counsel submits that the dictum laid down therein is that, Courts cannot rewrite the law, simultaneously explaining the principle of '*casus omissus'* and the attempt to have it supplied, where there is a lacuna, by the Court. When the statue is clear, insofar as Rule 20 says that it is for the Borrowing Department to place the employee under suspension, something else could not have been put into or read into that Rule, which virtually has been done by the learned Single Judge in holding that power is always vested with the Lending Authority as well and that Rule 20 is only an enabling provision. We find it difficult to accept the said proposition for the reasons noted below.

8. The question that came up for consideration before the Apex Court in ***Rajiv Kumar*** (supra) was more with regard to whether a deeming provision under Rule 10 (a) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as to the suspension because of the contingencies mentioned therein, with reference to the initiation of a criminal proceedings, will automatically come to end, once the criminal proceedings are over. The contention raised was that, suspension was envisaged only during pendency of the criminal proceedings and once the criminal proceedings come to the conclusion, suspension should also come to an end. The said provision was subjected to meticulous analysis by the Apex Court and specific observations and finding have been given in paragraph 18 to 24. We find it worthwhile to have it extracted as given below:

“18. It is well settled principle in law that the Court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute or any statutory provision is the determinative factor of legislative intent of policy makers.

19. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute or any statutory provision is to ascertain the intention of the Legislature or the Authority enacting it. (See Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr. (AIR 1998 SC 74)) The intention of the maker is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner (1846 (6) Moore PC 1), Courts, cannot aid the Legislatures, defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (Also See The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr. (JT 1998 (2) SC 253)). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd. (1978 1 All ER 948 (HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans (1910) AC 445 (HL), quoted in Jamma Masjid, Mercara v. Kodimaniandra Deviah and Ors.(AIR 1962 SC 847).

20. The question is not what may be supposed and has been intended, but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).

21. In D.R. Venkatchalam and Ors. etc. v. Dy. Transport Commissioner and Ors. etc. (AIR 1977 SC 842), it was observed that Courts must avoid the danger of an a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

22. While interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain (2000 (5) SCC 515). The legislative casus omissus cannot be supplied by judicial interpretative process.

23. Two principles of construction – one relating to casus omissus and the other in regard to reading the statute/statutory provision as a whole – appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. But, at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danackwerts, L.J. in Artemiou v. Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

24. It is then true that,

> "when the words of a law extend not to an inconvenience rarely happening, but do to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt."

"But," on the other hand,

> "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See Fenton v. Hampton 11 Moore, P.C. 345).

A *casus omissus* ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur,

> either through the inadvertence of the legislature, or on the principle *quod semel aut bis existit proetereunt legislatores*, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - *Casus omissus et oblivioni datus dispositioni communis juris relinquitur; "a casus omissus*," observed Buller, J. in Jones v. Smart (1 T.R. 52), "can in no case be supplied by a court of law, for that would be to make laws."

After discussion of the facts and figures, the Apex Court held that the plea as aforesaid was without any substance, in view of sub rule 5(a) and 5(c) of Rule 10. The Apex Court further held that, if the order deemed to have been made under Rule 10 (2) was to lose effectiveness automatically, after the period of detention envisaged came to an end, there would be no scope for the same being modified as contended by the Respondent and there was no need to make such provisions as are engrafted in Rule 10 (5)(a) and (c). The said ruling or observation does not come to rescue of the Appellant in any manner and the submission made to the contrary in this regard stands repelled.

9. Coming to the verdict sought to be relied on from the part of the Respondent i.e. ***Khemi Ram*** (supra), the points for consideration as codified in 'paragraph 5' are extracted below:

> "5. The three questions which are the subject-matter of present appeal have been stated by the High Court as follows:
>
> 1. Whether the respondent was no longer governed by the Punjab Civil Services Rules as his services had been borrowed by the Himachal Pradesh Administration and whether he ceased to he under the administrative control of the Punjab Government for that reason?
>
> 2. Whether it was permissible only for the Himachal Pradesh Administration place the appellant under suspension and the Punjab Government had no such authority?
>
> 3. Whether the leave which had been granted to the appellant by the Himachal Pradesh Administration could be cancelled subsequently ?

10. The issue involved in the present case is akin to the issue as raised in question No. 2 above and this has been answered by the Apex Court in 'paragraph 7' of the judgment which is reproduced below:

> “7. As regards the second point, the High Court has extracted Rule 20 of the central Civil Services (Classification, Control and Appeal) Rules, 1957, on which reliance was placed by the Counsel for the petitioner and has rightly held that there is nothing in the rule to show that it was not permissible for the Punjab Government to make an order for the suspension of the appellant merely because it had placed his services at the disposal of the Himachal Pradesh Administration on deputation. Moreover, as has been stated, the appellant reverted to the State of Punjab with effect from August 4, 1958, and came under the direct administrative control of that State. The High court therefore rightly decided that point also against the appellant.”

11. The learned counsel for the Petitioner submits that the finding in the said case was rendered by the Apex Court because of the particular circumstance, when the employee concerned was reverted to the Lending Department/Lending State and hence it cannot have any application. This is sought to be rebutted by the learned counsel for the State, pointing out that the 'first issue' as to the scope of the Rule was explained and answered in favour of the Lending Department/Lending State by the Apex Court in the opening portion of the verdict and the observation with regard to the status of an employee reverted to the Lending State was only an 'added reason' given in the penultimate sentence of the said paragraph.

12. After hearing both the sides and on going through the full text of the said verdict, we are of the view that the issue projected herein is squarely covered by the above judgment; more so when the effect of the provisions as contained in the Rule, with reference to the questions framed by the Supreme Court as given under paragraph 5 (2), stands answered in crystal clear terms in Paragraph 7.

13. While answering the question raised by this Court, it will also be worthwhile to have a look at the main provision for suspension of an employee, as given under Rule 9 of the Rules, 1966 which is extracted below:

> **“9.** (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order, may place a Government servant under suspension-
>
> (a) where a disciplinary proceeding against him is contemplated or is pending, or
>
> (b) where a case against him in respect of any criminal offence is under investigation, inquiry of trial :
>
> [Provided that a Government servant shall invariably be placed under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him :]
>
> Provided further that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.
>
> (2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-
>
> (a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours;
>
> (b) with effect from the date of his conviction, if, in the event of conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.
>
> **Explanation.** - The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.
>
> [(2-a) Where a Government servant is placed under suspension under clause (a) of sub-rule (1), the order of suspension shall contain the reasons for making such order and where it is proposed to hold an enquiry against such Government servant under Rule 14, a copy of the articles of charges, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained shall be issued or caused to be issued by the disciplinary authority to such Government servant as required by sub-rule (4) of Rule 14, within a period of 45 days from the date of order of suspension :

Provided that where the disciplinary authority is the [State Government or the High Court], the copy of charges and other documents mentioned above shall be issued or caused to be issued to such Government servant within a period of 90 days from the date of order of suspension.]

(2-b) Where the disciplinary authority fails to issue to the Government servant, a copy of the charges and other documents referred to in sub-rule (2-a) within the period of 45 days, the disciplinary authority shall, before expiry of the said period, obtain orders in writing of the State Government for extension of the said period of suspension :

Provided that the period of suspension shall in no case be enhanced beyond a period of 90 days from the date of the order of suspension.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension, is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant, is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5)(a) An order of suspension made or deemed to have been made under this rule, shall continue to remain in force until it is modified or revoked by the authority competent to do so :

[Provided that the order of suspension shall stand revoked on expiry of the period of forty-five days from tire date of order of suspension in case a copy of charges and other documents referred to in sub-rule (2-a) are not issued to such Government servant by the disciplinary authority (if it is not the State Government) without obtaining the orders of the State Government for extension of the period for issue of the said documents, as required under sub-rule (2-b) :

Provided further that the order of suspension shall stand revoked on expiry of the period of 90 days from the date of order of suspension, in case the copy of charges

> and other documents referred to in sub-rule (2-a) are not issued to such Government servant.]
>
> [(b) In respect of a Government servant, whose orders of suspension stand revoked in accordance with the first or second proviso of clause (a) the authority competent may, if it considers expedient so to do, place him under suspension after a copy of charges and other documents, as required by sub-rule (4) of Rule 14, have been issued to him.]
>
> [(c) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.
>
> [(d)] An order of suspension made or deemed to have been made under this Rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate :]
>
> [Provided that an order of suspension made under the first proviso to sub-rule (1) of Rule 9 shall not be revoked except by an order of the Government made for reasons to be recorded.]

14. There cannot be any dispute to the fact that it is open for the Appointing Authority to take appropriate disciplinary action against the employee concerned, including the power to suspend, conduct the inquiry and impose the punishment, if the illegalities are established, including by way of dismissal or otherwise. This power includes the power to impose 'minor penalties' under Rule 10 (i) to (iv) of the Rules, 1966 and 'major penalties' under Rule 10 (v) to (ix) of the Rules, 1966, of course, based on the different procedure to be pursued and completed.

15. Coming to Rule 20 of the Rules, 1966, it reads as follows :

> "**20. Provisions regarding officers lent to the Union or any other State Government or any subordinate or local authority, etc.** - (1) Where the services of a Government servant are lent by one department to another department or to the Union Government or to any other State Government or any authority subordinate thereto or to a local or other

authority (hereinafter in this rule referred to as "the borrowing authority"), the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him :

Provided that the borrowing authority shall forthwith inform the authority which lend the services of the Government servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding as the case may be.

(2) In the light of the findings in the disciplinary proceedings conducted against the Government servant;

(i) if the borrowing authority is of a opinion that any of the penalties specified in clauses (i) to (iv) of Rule 10 should be imposed on the Government servant, it may, after consultation with the lending authority, make such orders on the case as it deems necessary :

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) if the borrowing authority is of the opinion that a penalty specified in Rule 11 should be imposed on any member of class TV Government servant, it may impose such penalty without consulting the lending authority;

(iii) if the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 10 should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry and thereupon the lending authority, may, if it is the disciplinary authority pass such orders thereon as it may deem necessary, or, if it is not the disciplinary authority submit the case to the disciplinary authority, which shall pass such orders on the case as it may deem necessary :

Provided that before passing any such order the disciplinary authority shall comply with the provisions of sub-rules (3) and (4) of Rule 15.

Explanation. - The disciplinary authority may make an order under this clause on the record of the inquiry transmitted to it by the borrowing authority, or after holding such further inquiry as it may deem necessary, as far as may be, in accordance with Rule 14.”

16. The above Rule confers power upon the Borrowing Authority to place the employee (whose service has been borrowed) under suspension, of course with intimation to be served to the Lending Department as provided under the 'proviso' to Rule 20 (1). Rule 20 (2) proviso says that power is conferred upon the Borrowing Department to impose penalties specified in <u>clauses (i) to (iv)</u> of Rule 10 upon the employee; based on the findings in the disciplinary proceedings against the Government servant <u>after consultation with the Lending Authority. As per the proviso to Rule 20 (2) (I),</u> if there is a difference in opinion between the Borrowing Authority and the Lending Authority, the service of the Government servant shall be re-placed at the disposal of the Lending Authority. This shows that the ultimate word shall be that of the Lending Authority and not of the Borrowing Authority.

17. Sub Rule 2 (ii) of Rule 20 further makes clear that if a 'minor penalty' as envisaged under Rule 11 is to be imposed on any member of Class IV Government Servant, it could be imposed without consulting the Lending Authority. But when it comes to imposition of a 'major penalty', <u>Sub Rule 2(iii) of Rule 20</u> says that it shall re-place the service of the delinquent employee at the disposal of the Lending Authority and transmit all the enquiry proceedings to the lending authority who/disciplinary authority may pass appropriate orders as necessary with regard to the imposition of punishment. This is a further pointer to assert the rights and liberties of the Lending Authority, over and above the power of the Borrowing Authority.

18. The issue can be approached from a different angle as well; particularly as to why Rule 20 is to be there, when Rule 9 regarding suspension, supported by such other rules with regard to the enquiry and imposition of punishment is already there? In fact, it is a supplementary provision, in connection with the circumstances to be dealt with by the Borrowing Authority. In other words, when the service of an employee of the Government/Lending Authority is let to the

Borrowing Authority and while discharging the duties under the Borrowing Authority, it is possible that such employee may get involved in committing some or other misconduct. If action is to be taken by the Borrowing Authority, there has to be a 'master and servant relationship'. If such an action is taken without any power or authority, it may be open for the employee concerned to raise an objection to the effect that, as far as he is concerned, the competent authority is the Lending Authority and hence he can be placed under suspension and proceeded against only by the Lending Authority. This will place the Borrowing Authority in a difficult situation and if the Lending Authority is not desirous of, or reluctant in pursuing any such action, yielding to the request or pressure from the employee or outside, the working atmosphere in the Borrowing Department will be spoiled; also adversely affecting the rights and interest of the Borrowing Department and other employees there. On such an event, it will not be possible for the Borrowing Authority to impose discipline by taking appropriate steps. It is to meet this requirement, that the rule makers have incorporated such a Rule (Rule 20 of the Rules), conferring power of suspension upon the Borrowing Authority as well, of course subject to the riders (as mentioned therein as to the course of action to be pursued and the procedure to be followed), leaving ultimate power to the Lending Authority. The scope of the Rule as understood and applied by the learned Single Judge is perfectly correct and is not assailable under any circumstances.

19. We do not find any tenable ground to interfere. Appeal fails. It is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Hem