



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

RESERVED ON : 21.12.2021

DELIVERED ON : 20.01.2022

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CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.A. (MD) No.1827 of 2021

and

CMP(MD).No.7957 of 2021

1. The Superintending Engineer
Tamilnadu Generation and Distribution
Corporation Limited (TANGEDCO)
Tirunelveli Electricity Distribution Circle
Tirunelveli - 11.

2. The Assistant Executive Engineer
Distribution TANGEDCO
Vallioor, Tirunelveli District.

.. Appellants

Vs

Mohan Kumar

.. Respondent

Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 20.7.2021 passed in W.P.(MD) No.10396 of 2021 by the learned Single Judge.

Prayer in WP(MD) . 10396/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI or any other order in the nature of writ by call for the records relating to the order passed by the 1st respondent in memo No.ADM/IV/A1/F.Suspension/C.No.528/2019 dated 26.07.2019 and the consequential order of rejection of petitioners representation vide Ka.No.008337/326/Ni.Pi.4/01/Ko.Tha.Pa.Nee./2021 dated 17.04.2021 and quash the same as erroneous and may direct the respondents to reinstate the petitioner in to service within a stipulated period may pass such further or other orders as this Hon'ble Court and may deem fit and proper in the circumstances of the case and thus render justice.



For the Appellants

: Mr.Veera Kathiravan
Additional Advocate General
for Mr.T.Sakthikumaran

For the Respondent

: Mr.K.P.Narayanakumar

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JUDGMENT

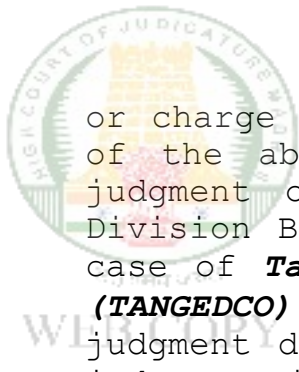
MUNISHWAR NATH BHANDARI, ACJ

The writ appeal has been filed against the judgment dated 20.7.2021 whereby the writ petition challenging the order of suspension was allowed. A direction for reinstatement of the writ petitioner/non-appellant was given, though with liberty to the appellants to transfer him to some other place.

2. The writ petition was filed challenging the suspension order dated 26.7.2019 and the subsequent order dated 17.4.2021 passed by the appellants rejecting the writ petitioner/non-appellant's representation. The writ petition preferred by the petitioner/non-appellant was allowed by the writ court mainly relying on the judgment of the Apex Court in the case of **Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291**. It was mainly on the ground that if a delinquent employee is suspended from service on registration of a criminal case or in contemplation of disciplinary proceedings and if charge-sheet or charge memo is not filed or served on the delinquent employee within three months, the order of suspension has to be revoked.

3. Learned counsel for the appellants submits that the delinquent employee was suspended by the order dated 26.7.2019 when he was caught red-handed accepting bribe. A criminal case was registered against him on 26.7.2019. Looking to the serious allegation of demand and acceptance of bribe and the writ petitioner/non-appellant having been caught red-handed, he was placed under suspension and the representation to recall the order of suspension was not accepted looking to the gravity and seriousness of the allegation.

4. The learned Single Judge ignored the allegation levelled against the delinquent while passing the judgment causing interference with the order of suspension mainly on the ground that the charge-sheet in the criminal case was not submitted within three months. It is ignoring the fact that Tamil Nadu Electricity Board Employees' Discipline and Appeal Regulations does not provide for automatic revocation of the order of suspension in case charge-sheet



or charge memo is not given or filed within three months. In view of the above, a prayer is made to cause interference with the judgment of the learned Single Judge. It is more so when the Division Bench of this court has dealt with the same issue in the case of **Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and others v. A.Srinivasan, 2020 Lab.I.C. 3814** [vide judgment dated 2.9.2020 passed in W.A.No.599 of 2020], wherein the judgment in the case of **Ajay Kumar Choudhary** (supra) was also considered.

5. According to learned Additional Advocate General appearing for the appellants, the learned Single Judge relied on the judgment of the Apex Court in the case of **Ajay Kumar Choudhary** (supra) ignoring the Larger Bench judgment of the Supreme Court in the case of **R.P.Kapur v. Union of India, AIR 1964 SC 787**. It is also submitted that the analogy to serve the charge memo or charge-sheet within a period of three months evolved by the Apex Court in the case of **Ajay Kumar Choudhary** (supra) was not in reference to the service rules governing the delinquent employee, but based on Section 167(2) of the Code of Criminal Procedure, 1973 (for brevity, "the Cr.P.C.") having no application in service matters. It is submitted that the Apex Court in the case of **Ajay Kumar Choudhary** (supra) mainly relied on the provisions of the Cr.P.C. ignoring that the provisions of the Cr.P.C. have no application to service matters. Section 167(2) of the Cr.P.C. provides for the period of filing of the final report in a case when an accused is behind the bars. If an accused has been arrested and is on remand, the charge-sheet/final report in such case has to be submitted within sixty days or ninety days depending on the sentence imposable in reference to the offence. In case the accused is behind the bars and the charge-sheet is not submitted within sixty or ninety days, as the case may be, he would be entitled to bail. The aforesaid analogy is not applicable to service matters, but the Apex Court relied on the period stipulated in the Cr.P.C. to hold suspension to be illegal if charge memo or charge-sheet is not given within three months. Even after drawing the aforesaid analogy, the Apex Court did not cause interference with the order of suspension in the case of **Ajay Kumar Choudhary** (supra) for the reason that charge-sheet has been filed therein. Thus, the employee was given liberty to challenge the continuous suspension, if he so chooses. Without analyzing the aforesaid, the learned Single Judge caused interference with the order of suspension.

6. Learned counsel for the appellants has made a reference to the Apex Court judgments in **the Government of India, Ministry of Home Affairs and others v. Tarak Nath Ghosh, (1971) 1 SCC 734** and **State of Orissa and others v. Shiva Parashad Das, (1985) 2 SCC 65**.

Learned counsel has made further reference to the Apex Court
<https://hcservices.ecourts.gov.in/hcservices/>



judgments in **State of Orissa v. Bimal Kumar Mohanty**, (1994) 4 SCC 126; **Secretary to Government and another v. K.Munniappan**, (1997) 4 SCC 255; **Gurpal Singh v. High Court of Judicature of Rajasthan**, (2012) 13 SCC 94; **State of Tamil Nadu v. Promod Kumar**, (2018) 17 SCC 677, and **State Bank of India and others v. Neelam Nag and another**, (2016) 9 SCC 491.

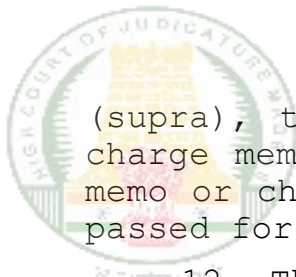
7. The judgments aforesaid have been relied to buttress the arguments raised by learned counsel for the appellants challenging the judgment of the learned Single Judge. The prayer is accordingly to set aside the judgment of the learned Single Judge.

8. The appeal has been contested by learned counsel for the writ petitioner/non-appellant. Learned counsel has supported the judgment of the learned Single Judge and referred the judgment of the Apex Court in the case of **Ajay Kumar Choudhary** (supra), apart from the judgment of the Apex Court in the case of **Promod Kumar** (supra) and the judgment of a learned Single Judge of this court in the case of **K.Selvamani v. The State of Tamil Nadu**, 2017 (1) CTC 795. A further reference to a Division Bench judgment of this court in the case of **P.S.Ambigapathy v. The Director of Public Health and Preventive Medicine, Salem**, 1991 (1) LW 682 has been given, apart from citing the judgment of this court in the case of **Chairman and Managing Director, TANGEDCO v. R.Balaji** [Judgment dated 27.8.2021 passed in W.A.No.68 of 2021], with a prayer to dismiss the appeal, as the learned Single Judge has not committed any error in causing interference with the order of suspension.

9. We have considered the rival submissions of the parties and perused the records.

10. The writ appeal has been filed to challenge the order of the learned Single Judge whereby the order of suspension has been set aside. It is a case where the writ petitioner/non-appellant was placed under suspension by the order dated 26.7.2019. It was with registration of a criminal case on the same day for commission of an offence under the Prevention of Corruption Act, 1988, as amended in the year 2018. The allegation against the delinquent was of demand and acceptance of bribe. He was caught red-handed and, accordingly, an FIR was registered against him immediately thereupon. He subsequently made a representation for revocation of the order of suspension, but the same was rejected by the appellants by their order dated 17.4.2021. It is precisely on the ground that order of suspension in the case cannot be revoked without complying the government instruction dated 26.4.2016.

11. The learned Single Judge, however, caused interference with the order of suspension mainly on the ground that a final report pursuant to the criminal case has not been filed and thus continuance of the order of suspension is not legal, rather hit by the judgment of the Apex Court in the case of **Ajay Kumar Choudhary** (supra). In the judgment in the case of **Ajay Kumar Choudhary**

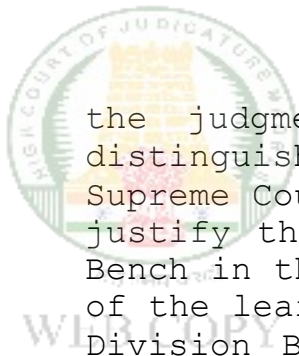


(supra), three months' time was provided for service or filing of charge memo or charge-sheet, as the case may be, and if the charge memo or charge-sheet is served, a reasoned order was directed to be passed for the extension of the period of suspension.

12. The challenge to the judgment of the learned Single Judge has been made not only by referring to the seriousness of the charges and pending criminal case against the delinquent, but after referring to the judgment of the Apex Court in the case of **Ajay Kumar Choudhary** (supra) which is said to have been decided mainly in reference to Section 167(2) of the Cr.P.C., though the provisions of the Cr.P.C. are not applicable in service matters. It is also on the ground that the judgment of the Five-Judge Bench in the case of **R.P.Kapur** (supra) was not cited before the court that decided the case of **Ajay Kumar Choudhary** (supra). It is further pleaded that the judgment in the case of **Ajay Kumar Choudhary** (supra) was distinguished by the Apex Court itself and even by the Division Bench of this Court. It is with the argument that there is no rigid provision in the Regulations governing the delinquent for causing interference with the order of suspension on the ground that charge memo or charge-sheet has not been filed within three months. The judgment in **Ajay Kumar Choudhary** (supra) is not applicable when a criminal case is registered against the delinquent and that too for an offence under the Prevention of Corruption Act, 1988.

13. To analyse the argument, we would refer to the judgment of the Apex Court in the case of **Ajay Kumar Choudhary** (supra). In the case of **Ajay Kumar Choudhary** (supra), the Apex Court did not cause interference with the order of suspension as the charge-sheet was served on the delinquent. It is urged by the learned Additional Advocate General that the judgment in the case of **Ajay Kumar Choudhary** (supra) was delivered by the Apex Court referring to the provisions of the Cr.P.C., whereas the provisions of the Cr.P.C. are not applicable in service matters or to a matter pertaining to suspension from service. A perusal of the judgment in the case of **Ajay Kumar Choudhary** (supra) shows a reference to Section 167(2) of the Cr.P.C. to consider the legality of an order of suspension from service. We, therefore, find substance in the argument of learned Additional Advocate General that the revocation of an order of suspension merely on the ground that charge memo was not filed within three months cannot be driven by the provisions of the Cr.P.C., but has to be guided by service rules governing the employee and the guidelines issued by the government. The period of three months stipulated in the case of **Ajay Kumar Choudhary** (supra) was taken in reference to Section 167(2) of the Cr.P.C. which is the period given for submission of final report within sixty days or ninety days depending on the sentence provided for the offence.

14. The judgment in **Ajay Kumar Choudhary** (supra) was otherwise considered by the Division Bench of this Court in the case of **A.Srinivasan** (supra), wherein it referred to relevant paragraph of



the judgment in the case of **Ajay Kumar Choudhary** (supra) to distinguish it on the facts. The Larger Bench judgment of the Supreme Court in the case of **R.P.Kapur** (supra) was also referred to justify the continuance of the suspension and thereby the Division Bench in the said case caused interference with the similar judgment of the learned Single Judge. A reference to the judgment of another Division Bench of this court in the case of **Director General of Police v. T.Kamarajan** [Judgment dated 19.11.2019 passed in W.A.No.3957 of 2019] was also given, wherein the judgment of the Apex Court in the case of **Ajay Kumar Choudhary** (supra) was distinguished to hold that the said judgment does not lay down an absolute proposition that an order of suspension cannot go beyond three months. Paragraphs 7 to 11 of the judgment in **A.Srinivasan** (supra) are quoted hereunder for ready reference:

"7. The principal question that arises for consideration is whether the order of suspension is liable to be revoked in the facts and circumstances of the case. The undisputed position, in this case, is that criminal proceedings were initiated against the Respondent on the basis of the trap laid by the Vigilance and Anti-Corruption Department. Such proceedings are admittedly pending before the Chief Judicial Magistrate, Thiruvannamalai in S.C. No. 53 of 2018. Therefore, this is clearly a case wherein a charge sheet was filed and the criminal process is underway. The law relating to suspension orders and their revocation should be examined against this background.

8. On perusal of the Full Bench judgment in *S. Ravi*, it is clear that the Court did not direct the revocation of suspension if the suspension period exceeds a specific duration. This is clear from paragraph-48 and 49 of the said judgment which read as under:

'48. Tracing the rule from 1930, the first one Madras Civil Services (Classification, Control and Appeal) Rules; thereafter called as Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, 1953, and then the present rules, namely, Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, having been experienced by the administrative set up, the order of suspension made or deemed to have been made under the rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate. When the dominant position of the rules from 1930 does not distinguish the conflicting interest of the



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delinquent employee of revocation at any time and not categorising the clauses, the executive order, which has been brought into action on 30.01.1996, has not been incorporated in the rules till now. Therefore, the force of law as to the application of rule is that notwithstanding the pendency of any case and the Government servant is placed under suspension, the authority competent is empowered to revoke the suspension at any point of time. Keeping the Government servant in a hanging position of prolonged suspension without revocation or review of such order, taking into account various factors, such as, investigation and the other mechanism involved in the process of conclusion of the enquiry for certain reasons not to conclude the enquiry, may not be right on the executive authority and, therefore, we feel, the said issue needs to be considered either by amending the rules or by bringing a proper legislation in regulating the order of suspension.

49. The Constitution of India guarantees the right of public employment and the equality thereof guaranteed to everyone under Article 16 (1) shall be made available to every citizen, including the delinquent employee. Such a right has to be enjoyed by the Government servant during the pleasure of the Governor of the State. Therefore, the executive order, taking away the rights conferred upon the citizens, without making necessary amendment to the rules or bringing proper legislation, is bad in law and the review of the order of suspension by the authority without giving any distinction of the category of cases shall be made as a mandatory requirement by prescribing a period of review, otherwise, there will be a serious prejudice and continued apathy over the issue of keeping the Government servant for an unending period under suspension.'

9. The sheet anchor of the Respondent's case is the judgment in Ajay Kumar Choudhary. Therefore, it is necessary to extract paragraphs 21 and 22 thereof which are as under:

'21. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of



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Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. 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.

22. So far as the facts of the present case are concerned, the Appellant has now been served with a Chargesheet, and, therefore, these directions may not be relevant to him any longer. However, if the Appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the Respondents will be subject to judicial review.'

10. On perusal of the judgment in Ajay Kumar Choudhary, it is clear that the Hon'ble Supreme Court was dealing with a case wherein the Appellant had been served with a charge sheet before the judgment was pronounced. On that basis, on the facts of that case, paragraph 22 reflects that the order of suspension was not set aside although the suspension period exceeded three months. However, while disposing of the case, the Hon'ble Supreme Court held that the suspension period should not extend beyond three months if the memorandum of charges/charge sheet



is not served on the delinquent officer/employee. The judgment in Ajay Kumar Choudhary was dealt with in detail by a Division Bench of this Court in Director General of Police [cited supra]. In the said judgment, this Court held as follows in paragraphs 9-11:

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'9. We are of the view that Ajay Kumar Choudhary (supra) does not lay down any absolute proposition that an order of suspension should never extend beyond three months. In fact, in Ajay Kumar Choudhary (supra), the Supreme Court observed that the directions regarding the restriction on extension of a suspension order beyond three months would not apply as the appellant had been served with a charge sheet. The appellant had only been given the liberty to challenge his continued suspension in any manner known to law, if so advised, and it was clarified that the action of the respondents in continuing suspension would be subject to judicial review. In our view, the learned Single Bench erred in setting aside the suspension placing reliance on Ajay Kumar Choudhary (supra).

10. It is well settled that a judgment is to be understood in the context of the facts in which the judgment is rendered. Sentences in a judgment cannot be read in the same manner as a statute and in any case, words and sentences in a judgment cannot be read out of context. In Padma Sundara Rao (Dead) and others v. State of Tamil Nadu and others, reported in (2002) 3 SCC 533, cited by Mr. S. Saji Bino, learned counsel appearing on behalf of the appellant, a Five Judge Bench of the Supreme Court held as under:

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* (1972) 2 WLR 537.

Circumstantial flexibility, one additional or



different fact may make a world of difference between conclusions in two cases.'

11. In the instant case, as observed above, a charge sheet had been issued, though after five months and four days of the suspension. The learned Single Bench ought to have considered the question of whether the suspension should outright be set aside or allowed to continue upon consideration of all relevant facts and circumstances, including the nature of the charges.'

Likewise, the Division Bench of this Court in *R. Elumalai v. District Collector*, [2020 SCC online Mad 1472], considered the *Ajay Kumar Choudhary* case and the judgment of the Delhi High Court in *Government of NCT of Delhi* (cited supra) and concluded that in cases relating to suspension for alleged involvement in graft charges leading to a criminal trial, interference with the suspension order on the basis that the suspension period exceeded three months is not justifiable.

11. Upon considering the law laid down in the judgments that have been discussed herein above, it is clear that there is no absolute rule in respect of the validity of suspension orders from the perspective of duration especially when such suspension is in the context of a pending criminal proceeding. In other words, in these situations, the law on suspension as laid down in paragraph 11 of *R.P. Kapur v. Union of India*, AIR 1964 SC 787, by a Five Judge Bench upholding suspension pending enquiry subject to payment of subsistence allowance as per service conditions and that in *Union of India v. Ashok Kumar Aggarwal*, (2013) 16 SCC 147, wherein it was held that the court does not sit in appeal and that such orders would be interfered with only if the charges are patently baseless, mala fide or vindictive would continue to hold the field. In this case, as stated earlier, there is a pending criminal proceeding, wherein the Respondent is being prosecuted for corruption. In these circumstances, the decision of the learned single Judge to direct the Chief Judicial Magistrate to conclude the proceeding within four months is justified and does not warrant interference. On the other hand, especially in light of the above direction, the revocation of the suspension on the ground that it is prolonged is clearly unsustainable. The consequential direction to post the Respondent in a non-sensitive post is also not sustainable especially in view of the fact

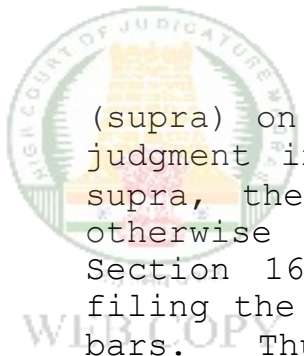


that the Respondent is an Assistant Engineer and it is difficult to find a post that may be termed non-sensitive in that cadre. Therefore, we allow the appeal in part insofar as it directs the Appellants to revoke the suspension and to post the Respondent in a non-sensitive post. On the other hand, we affirm the impugned order to the extent that the Chief Judicial Magistrate, Thiruvannamalai, has been directed to conclude the criminal proceedings within a period of four months, albeit with the qualification that the said period shall run from the date of receipt of a copy of the judgment in this appeal."

15. The issue is required to be considered on facts and in the light of the Tamil Nadu Electricity Board Employees' Discipline and Appeal Regulations where there is no provision to deem revocation of the order of suspension if it goes beyond the period of three months. The Regulations does not prescribe a specified period of suspension. It only provides for periodical review of the order. It is, however, with a rider that in a case involving corruption, the order of suspension would not be revoked without consulting the Director of Vigilance and Anti-corruption.

16. In the case on hand, the writ petitioner/non-appellant is facing a criminal case for the offence under the provisions of the Prevention of Corruption Act, 1988. He was caught red-handed accepting the bribe. The learned Single Judge passed the judgment under appeal without referring to the Regulations applicable to the case and without realizing the seriousness of the offence. This is apart from the fact that there exist government instructions dated 26.4.2016, where referring to various judgments of the Supreme Court, which include **Ajay Kumar Choudhary** (supra) and **R.P.Kapur** (supra), it was instructed that the time limit of three months on suspension cases is applicable only to the cases arising out of departmental disciplinary enquiries pertaining to non-vigilance and/or any non-criminal cases and the said time limit is not applicable to suspension of an employee facing criminal case or grave corruption charges pending against him. The learned Single Judge has not referred to the aforesaid government directives, despite a resolution by the appellants for adoption of the guidelines to their Corporation as well.

17. The Larger Bench judgment of the Apex Court in the case of **R.P.Kapur** (supra) has been referred by the Division Bench of this court in **A.Srinivasan** (supra). The judgment in the case of **R.P.Kapur** (supra) was not cited in the case of **Ajay Kumar Choudhary** (supra) despite being a Larger Bench judgment and, thus, was distinguished by the Division Bench of this court in **A.Srinivasan**



(supra) on facts as well as on legal position after discussing the judgment in the case of **Ajay Kumar Choudhary** (supra). As stated supra, the judgment in the case of **Ajay Kumar Choudhary** (supra) otherwise provides the period of three months in reference to Section 167(2) of the Cr.P.C., which stipulates time period for filing the final report in criminal cases, if accused is behind the bars. Thus, the judgment in the case of **Ajay Kumar Choudhary** (supra) does not lay down the ratio that a suspension order would be illegal if it is continued beyond the period of three months of registration of the criminal case, rather in the case of **Ajay Kumar Choudhary** (supra) itself the order of suspension was not interfered because charge-sheet was later on filed, though after three months since the date of initial suspension of the delinquent therein.

18. In the case of **Bimal Kumar Mohanty** (supra), the Apex Court caused interference with the interim order passed by the State Administrative Tribunal against the order of suspension despite registration of the criminal case in reference to allegation of acquisition of property disproportionate to the sources. The Supreme Court held that exercise of judicial review to interfere with a suspension order which has been passed despite a vigilance investigation which led to registration of a criminal case against the delinquent, is thus uncalled for. In the said judgment, the Supreme Court referred to the earlier decision of the Larger Bench in **R.P. Kapur** (supra). Paragraphs 7 and 10 to 13 of the said judgment are quoted hereunder:

"7. A Constitution Bench of this Court three decades ago in *R.P. Kapur v. Union of India*, AIR 1964 SC 787 laid the law that:

'The general principle therefore is that an employer can suspend an employee pending an inquiry 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 this 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 inquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental inquiry against him.'

....

10. This Court in another case titled *Government of India, Ministry of Home Affairs v. Tarak Nath Ghosh* [(1971) 1 SCC 734 : (1971) 3 SCR 715] held:

'Serious allegations of corruption and malpractices had been made against the respondent, a member of the Indian Police Service, serving in the State of Bihar. Inquiries made by the State Government revealed that there was a prima facie case made out against him. He was suspended by an order which stated that disciplinary proceedings were contemplated against the respondent.

On the question whether the suspension of a member of the service can only be ordered after definite charges have been communicated to him in terms of Rule 5(2) of the All India Services (Discipline and Appeal) Rules, 1955, or whether the Government is entitled to place him under suspension even before that stage has been reached after a preliminary investigation.

Held:

(1) The fact that in other rules of service there is specific provision for an order of suspension even when disciplinary proceedings were contemplated, does not mean that a member of the All India Service should be dealt with differently. It would not be proper to interpret the Rules, which form a self-contained Code, by reference to the provisions of other rules even if they were made by or under the authority of the President of India.'

(Quoted from the SCR Headnote)

11. This Court in *U.P.Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan* [1993 Supp (3) SCC 483 : 1994



SCC (L&S) 67 : (1993) 25 ATC 764] held that: (SCC pp. 483-84, headnote)

'Ordinarily when there is an accusation of defalcation of monies the delinquent employees have to be kept away from the establishment till the charges are finally disposed of. Whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question and hence it is always advisable to allow disciplinary proceedings to continue unhindered.

From the charge-sheet it is clear that the allegations against the first respondent are grave inasmuch as they indicate that the amounts mentioned therein are not deposited in the bank and forged entries have been made in the pass-book and the amounts are shown as having been deposited. In the circumstances, the High Court should not have interfered with the order of suspension passed by the authorities. In matters of this kind, it is advisable that the concerned employees are kept out of the mischief's range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension.'

12. That was also a case in which the High Court passed interlocutory order and this Court, while reiterating that this Court does not interfere with the interlocutory orders, held that the Court was constrained to do so when the court had overlooked the serious allegations of misconduct.

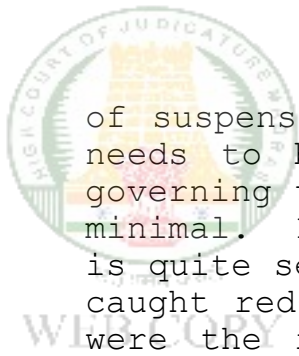
13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It



would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

19. In ***K.Munniappan*** (supra) referred by learned counsel for the appellants, the Apex Court considered the power of the government to suspend an employee who was involved in embezzlement of public funds and held that even if there is a time gap, a threadbare investigation is required to be undertaken, and it would be difficult to find fault with the authorities for not completing investigation expeditiously when many persons were involved. The Apex Court, however, directed expeditious completion of the investigation.

20. In the case of ***Bimal Kumar Mohanty*** (supra), the Apex Court held that suspension is not a punishment, but only one for forbidding or disabling an employee to discharge the duties of office or post held by him. It is with the direction that each case may be considered on its facts and taking into account the gravity of the offence or the misconduct. The interference with the order



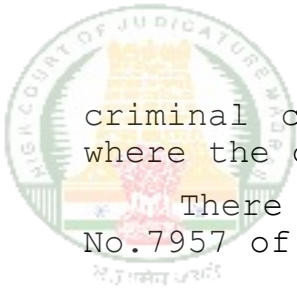
of suspension should not be driven in reference to a judgment, but needs to be determined on facts and after considering the rules governing the delinquent. Judicial review in such matters should be minimal. In the instant case, the allegation against the delinquent is quite serious, as he not only demanded but accepted bribe and was caught red-handed by the Anti-Corruption Department. The aforesaid were the relevant facts, but were not considered by the learned Single Judge while causing interference with the order of suspension. It is even after ignoring the earlier judgment of the Division Bench in the case of **A.Srinivasan** (supra), wherein it was categorically held that the judgment of the Apex Court in the case of **Ajay Kumar Choudhary** (supra) does not evolve a general principle for causing interference with the order of suspension if charge-sheet is not served or charge memo is not filed within three months of the order of suspension. The finding of the Division Bench of this Court in the case of **A.Srinivasan** (supra) has even been ignored, though binding in nature.

21. In view of the above, we find reasons to cause interference with the judgment of the learned Single Judge as none of the judgments cited by learned counsel for the writ petitioner/ non-appellant provide assistance on the issue, rather those judgments have been given referring to the judgment in the case of **Ajay Kumar Choudhary** (supra), without analyzing the fact that even in the case of **Ajay Kumar Choudhary** (supra), the order of suspension was not interfered with by the Apex Court, though the charge-sheet in the said case was filed after three months since the date of initial suspension of the delinquent employee.

22. The judgment in **Ajay Kumar Choudhary** (supra) came up for consideration before the Apex Court in the case of **Promod Kumar** (supra). Though in the said case interference with the order of suspension was made, it was after considering the fact that order of suspension was made as the delinquent remained behind the bars for more than 48 hours. The order of suspension was not in reference to a vigilance case or for the allegation of the nature involved herein.

23. In view of the aforesaid, we set aside the judgment of the learned Single Judge and allow the appeal. It is, however, with a direction to expedite the criminal proceedings against the delinquent and if it is not concluded within a reasonable time, then it would be open to the delinquent employee to make a representation to recall the suspension order which otherwise cannot be continued beyond a reasonable period, as it is pending for last two years. The order of suspension is not interfered with looking to the allegation of demand and acceptance of bribe by the delinquent petitioner/non-appellant and he having been caught red-handed.

24. A copy of this order would, accordingly, be produced by the appellants before the court concerned which would be trying the



criminal case and even furnished to the police station concerned where the case has been registered to expedite the matter.

There will be no order as to costs. Consequently, C.M.P.(MD) No.7957 of 2021 is closed.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

sasi

To

1. The Superintending Engineer
Tamilnadu Generation and Distribution
Corporation Limited (TANGEDCO)
Tirunelveli Electricity Distribution Circle
Tirunelveli - 11.

2. The Assistant Executive Engineer
Distribution TANGEDCO
Vallioor, Tirunelveli District.

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-2216[F] dated 24/01/2022)

W.A. (MD) No. 1827 of 2021

20.1.2022

RK(07/03/2022) 17P 4C