IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 25480 of 2019

Between:

D.Srinivasa Rao ... Petitioner

And

The State of Telangana, Revenue (Vig.II) Department and another.

... Respondents

JUDGMENT PRONOUNCED ON: 14.11.2022

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? : yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals? : yes

3. Whether Their Lordships wish to see the fair copy of the Judgment? : yes

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SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 25480 of 2019

% 14.11.2022

Between:

D.Srinivasa Rao

..... Petitioner

and

$ The State of Telangana, Revenue (Vig.II) Department and another.

.....Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Mr K.Lakshmi Narsimha

^Counsel for the Respondents: G.P. for Revenue
G.P. for Commercial Tax

? Cases Referred:

1. (2015) 7 SCC 291)
2. (2018) 17 SCC 655)
3. W.P.No.8185 of 2020, prder dated 22.05.2020
4. Special Leave to Appeal (c) No(s).8024 of 2020, Order dated 22.04.2022
5. (2005)(2) SCC page 673
6. AIR 2009 SC 628
7. (1994) 4 SCC 126 at para 13
8. AIR 1963 SC 687
9. 2013 (16) SCC page 147
10. (1996) 3 SCC 157

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 25480 of 2019

ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Revenue and learned Government Pleader for Commercial Tax.

2. This writ petition is filed to issue a writ or order preferably in the nature of Writ of Mandamus and calling for records pertaining to the impugned order vide Memo No.10964/Vig II(1)/2017, dated 23.10.2019 passed by the 1st respondent and consequently, declare the impugned Memo of continuing the petitioner under suspension as illegal, arbitrary, contrary to law without any application of mind or fact, bereft of any reason and violative of Articles 12, 14, 16 and 21 of the Constitution of India and consequently, quash the same as such and consequently declare that the petitioner is entitled for reinstatement and consequently direct the respondents to reinstate the petitioner into service forthwith all consequential consequences.

3) The case of the petitioner, in brief, is as follows:

a) The petitioner is a direct recruit Commercial Tax Officer having been selected by APPSC in the year 1993. Subsequently, he was promoted as Assistant Commissioner of Commercial Taxes in 2002, as Deputy Commissioner of Commercial Taxes in 2005, and owing to introduction of GST w.e.f. 2017 the post of Deputy Commissioner was re-designated as Joint Commissioner of Commercial Taxes.

b) While the petitioner was working as the Deputy Commissioner of Commercial Taxes, he was posted to Nizamabad Division and worked there from 05.09.2012 to 09.09.2016 and later he was transferred and posted as Appellate Deputy Commissioner, Punjagutta, Hyderabad.

c) One L.Vijayander Commercial Tax Officer appears to have given complaint on 02.02.2017 vide FIR No.52/2017 at PS Bodhan that during 2012 to 2014, five persons created bogus challans and cheated the Government. There was no complaint against the petitioner. On the confessional statement of one Sri Simhadri Venkata Sunil, the police

visited the house of the petitioner on 30.04.2017 and illegally arrested the petitioner on the very same day.

d) As per G.O.Rt.No.323, dated 24.05.2017 the petitioner was placed under suspension that the petitioner was detained in custody exceeding 48 hours. The petitioner obtained bail on 01.08.2017 in Crl.M.P.No.1450 of 2017 from I Additional Judicial Magistrate of I Class, Nizamabad on certain conditions. Thereafter, the petitioner made several representations to the respondents to reinstate him into service.

e) The Government issued G.O.Rt.No.9, dated 09.01.2018 framing certain charges against the petitioner. During suspension period, the petitioner was paid 50% subsistence allowance. As per the order dated 09.03.2018 of this Court in I.A.No.1 of 2018 in W.P.No.6647 of 2018, if the suspension is more than two years, the employee is entitled for 75% of the subsistence allowance.

f) W.P.No.16906 of 2018 filed by the petitioner was disposed of on 02.05.2018 directing the respondents to review the suspension order dated 08.03.1994 within a perod

of four weeks. In the review meeting held on 20.06.2018 it was decided that the suspension of the petitioner would continue.

g) The petitioner filed W.P.No.2891 of 2019 seeking reinstatement into service and the same was disposed on 02.07.2019 directing the respondents to review the suspension order in terms of GO dated 19.08.2008. the petitioner also made a request, but no action has been taken by the respondents and hence, the present writ petition is filed.

4. The counter filed by the 1st respondent, in brief, is as follows:

a) The petitioner is involved in a criminal case which is still under investigation by the CID authorities. The Government has got power to review the orders of suspension and extend the suspension period. The committee also observed that the Bodhan Challans Scam is a case of criminal breach of trust, forgery of challans, making fake challan entries in the accounts of VAT/CST cheating the Government of about Rs.90 crores. The CID authorities also informed that the case is

under final stage of investigation and they opined that maximum loss of revenue happened during the tenure of the petitioner.

b) As per G.O.Ms.No.2, dated 04.01.2006, the subsistence allowance shall be restricted to 50% in all cases where a *prima facie* case is established on charges of corruption, misappropriation and demand or acceptance of illegal gratification until finalisation of the disciplinary case. Therefore, the writ petition is liable to be dismissed.

5. The main contentions putforth by the learned counsel for the petitioner are as follows:

a) That the petitioner in the present writ petition challenges the impugned order vide Memo No.10964/Vig.II (1)/2017, dated 23.10.2019 passed by the 1st respondent and consequently to declare the impugned memo continuing the petitioner under suspension since 24.05.2017 vide G.O.Rt.323, Revenue (Vig.II) Department, dated 24.05.2017 as illegal and arbitrary.

b) That the order impugned i.e., Memo No.10964/Vig.II(1) /2017, dated 23.10.2019 is an unreasoned order, bad in law and unconstitutional.

c) That the Impugned Memo dated 23.10.2019 is an order passed without application of mind. Though the order impugned dated 23.10.2019 refers to a review meeting held on 23.10.2019 in its subject, but surprisingly, no such reference was made in the main order impugned and in fact, no review was held.

d) A bare perusal of FIR 52 of 2017 clearly shows that the petitioner was not an accused as on 02.02.2017 when FIR 52 of 2017 was registered. Petitioner i.e., A.9 was included vide C.D. dated 01.05.2017 and that there is no independent enquiry conducted by the respondent.

e) The order impugned is silent, non speaking order which neither refers nor discusses the material available on record so as to arrive at the conclusion that the suspension order issued against the petitioner is warranted and requires to be continued.

f) Even the counter affidavit filed by the respondents in W.P.No.25480 of 2019 in pursuance to the order dated 07.12.2021 passed in W.A.No.635 of 2021 is silent and does not reflect the basis upon which the respondent authority arrived at the said conclusion of continuing the petitioner under suspension and neither the counter nor the impugned order refers to the evidence collected till then, evidencing a strong prima facie case against the petitioner and therefore, admittedly, there was no objective material which warranted the continuation of the order of suspension issued against the petitioner.

g) That the petitioner was released on bail by the order dated 01.08.2017 in Crl.M.P.No.1450 of 2017 in FIR No.52 of 2017 (PS Bodhan) and the charge sheet was not filed even as on 01.08.2017.

h) The petitioner gave a detailed explanation dated 09.04.2018 to G.O.Rt.No.9, dated 09.01.2018 duly perusing the statement of articles of charge enclosed to it, but however, the same was not considered and the impugned order of suspension was passed vide G.O.Rt.No.323, dated 24.05.2017, mechanically.

i) That the petitioner approached the Court by filing W.P.No.16906 of 2019 for the petitioner's continued period of suspension and this Court by order dated 02.05.2018 directed the 1st respondent herein to consider the case of the petitioner for review of suspension order in terms of G.O.Ms.No.86, dated 08.03.1994 and in terms of the judgment of the Apex Court reported in 2015(7) SCC 291 in **Ajay Kumar Chowdary v Union of India.**

j) That the petitioner on an earlier occasion approached the High Court by filing W.P.No.2891 of 2019, which was disposed of on 02.07.2019 directing the respondents to review the suspension order dated 24.5.2017 in terms of G.O.Ms.No.526, dated 19.08.2008 and pass appropriate orders in accordance with law. But however, the order impugned has been passed without taking into consideration the terms stipulated in G.O.Ms.No.526, dated 19.08.2008, which clearly cast a responsibility on the respondent to review the orders of suspension against the employees continued under suspension well before completion of two years of suspension and take a decision to continue employees under

suspension beyond two years duly recording the reasons for such a decision.

k) That the observations at para 4 of the order dated 02.08.2019 passed in Crl.R.P.No.25 of 2019 by the Court of the I Additional Sessions Judge, at Nizamabad clearly indicate that the petitioner is aged 56 years and he had not violated any conditions imposed so far, nor he left head quarters without permission of the Court and that investigation to the extent of the petitioner is completed.

l) That the petitioner is entitled for grant of relief as prayed for as per the judgments of the Apex Court:

(1) **Ajay Kumar Choudhary v Union of India Through its Secretary and another reported in ((2015) 7 SCC 291), judgment dated 16.02.2015 (Para 21 on the point that a reasoned order must be passed for extension of the suspension)**

(2) State of Tamilnadu Represented by Secretary to Government (Home) v Promod Kumar, IPS and another reported in (2018) 17 SCC 655), judgment dated 21.08.2018. (Paras 24, 25, 26, 27 and 28 on the point that suspension must necessarily be for a short duration.)

(3) Writ Petition No.8185 of 2020, judgment dated 22.05.2020 of the Division Bench of the High Court of A.P. (the conclusions arrived at pages 37 to 43) on the point of application of mind by the Authority concerned duly examining the material on record).

(4) Special Leave to Appeal (c) No(s).8024 of 2020 between: The State of Andhra Pradesh v A.B.Venkateswara Rao and others of the Apex Court judgment dated 22.04.2022. (Para 1) (On the point that the impugned order of suspension cannot continue beyond the period of two years in law).

m) The Counsel for the Petitioner contends the writ petition has to be allowed as prayed for as per the law laid down by the judgments referred to and discussed above.

6. The main contentions put-forth by the learned counsel for the respondent on the basis of the counter affidavit paras 6, 8, 9, 12 and 29, which are extracted below are as follows:

a) The petitioner's inaction resulted in huge loss of revenue.

b) The report of the CID is yet to be received, therefore, the suspension of the petitioner is review time and again and decided the continued the petitioner under suspension.

c) Charges were framed against 24 persons and it is a time taking process to examine the explanation of all of them.

d) Further action can be taken only after the final report is received from the CID.

e) The inaction of the petitioner had caused immense damage to the revenue interests of approximately Rs.92.43 crores for the years 2012-13 to 2016-17. Therefore, the prayer of the petitioner in the present writ petition cannot be granted.

7. <u>The relevant extracts of the counter affidavit:</u>

> **"Para 6:**
> In reply to para 3.2, it is submitted that, the officer worked as Deputy Commissioner (CT) Nizamabad, for four years. The maximum damage happened during his time. He has failed to supervise the Division and allowed outsiders to run the Division and Bodhan Circle. He has failed to monitor the VATIS balances, which over a period of time have become non-collectable. Wrong reports were sent on revenue and arrears. He has failed to ensure the reconciliation of challans. His inactions have resulted in huge loss of revenue and are guilty of dereliction of duty and conduct unbecoming of a Government Servant. In General transfers the petitioner was transferred from Nizamabad Division and posted as ADC (CT) Punjagutta Division. The Government have issued suspension orders against the officer from the date of his detention i.e. 01.05.2017, as the petitioner was involved in Criminal Case No.52 of 2017 U/s 406, 409, 420, 468, 120(B) read with IPC of Bodhan Town P.S., Nizamabad on 02.02.2017 and was arrested on 01.05.2017, and produced before the Hon'ble Additional Judge First Class Magistrate, Nizamabad on 01.05.2017 and the Hon'ble Court remanded him to judicial custody up to 15.05.2017. As per Rule 8(2)(a) of TCS (CC&AA) Rules, the petitioner was placed under suspension, vide G.O.Rt.No.323, Rev.(vig.II) Dept. dated 24.05.2017, as his custody exceeded 48 hours.

Para 8:

In reply to para 3.4, it is respectfully submitted that Sri D.Srinivas Rao, Deputy Commissioner (CT) Appeals is involved in a case of criminal breach of trust, forgery of challans, making fake challan entries in the accounts of VAT/CST dealers in Government VATIS Portal and thereby cheating the Government and Clients (VAT/CST dealers), causing huge revenue loss to the Government, which occurred prior to 02.02.2017 at O/o the Commercial Tax Officer, Bodhan Circle, Nizamabad District, during his tenure as Dy.Comnr., (CT), Nizamabad from 05.09.2012 to 09.09.2016. In this case, the petitioner is A.9.

Para 9.:

In reply to para 3.5, it is submitted that as per Rule 8(2)(a) of TCS CCA Rules, the officer was placed under suspension, vide G.O.Rt No.323, Revenue, (Vig.II) Department, dated 20.05.2017 as his custody exceeded 48 hours. The criminal case is under investigation. It is submitted that the Government issued charge Memo vide G.O.Rt.No.9, Revenue (Vig.II) Dept., dated 09.01.2018. Petitioner submitted written statement of defence to the charge memo denying the charges framed against him. I pursuance of the orders ated 02.05.2018 in W.P.No.16906 of 2018 of Hon'ble Court, a review meeting was conducted by the Government i.e. the Disciplinary Authority on 20.06.2018 and the Government decided to continue the petitioner under suspension as the C.I.D. report yet to be received in the Bodhan Challans Scam and also requested the C.I.D. authorities to expedite their report vide Memo dated 03.07.2018 and also reminded the C.I.D. authorities to expedite the report vide memo dated 04.01.2019 and D.O.letter dated 23.03.2019.

Para 12:

In reply to para 3.6, it is submitted that, the petitioner herein is involved in a criminal case which is still under investigation by the CID authorities, Hyderabad. The petitioner herein is A.9 in the said case. The suspension of petitioner is reviewed time and again and decided to

continue him under suspension. The report of CID is yet to be received. The CID, authorities are time and again requested to furnish the Inquiry Report to Government.

Para 29:
In reply to para 4.6, it is respectfully submitted that the Bodhan Challan Scam case is a group case, in which 24 persons are involved. Charges were framed against the 24 persons. It is a time taking process to examine the explanations of all of them. C.I.D. investigation is also going on. The CID authorities have informed that the case is under final stage of investigation. Further action can be taken after the final report is received from the CID. Hence the contention of the petitioner, that the Government did nothing is incorrect. Hence, the contention of the petitioner may be rejected."

PERUSED THE RECORD:

DISCUSSION AND CONCLUSION:

8. **All the judgments relied upon by the counsel for the petitioner are Two Judge Bench judgments of the Apex Court.**

9. It is true that the Two Judge Bench judgment of the Apex Court in Ajay Kumar Chowdhary v Union of India reported in 2015 (7) SCC 291 has no doubt held that failure to issue a charge sheet to the delinquent employee within three months from the date on which he was placed on suspension is fatal and he would be entitled for reinstatement, but fact remains that the

law declared by the earlier constitution Bench judgment's of the Supreme Court have held to be contrary.

10. On the question of binding effect of the law declared by the Two Judge bench of the Supreme Court in Ajay Kumar Choudhary's case reported in 2015(7) SCC page 291, it must be borne in mind that the doctrine of binding precedents has the merit of promoting certainty and consistency in judicial decisions, and enables an organic development of the law. The law laid down by the Supreme Court in a decision delivered by a Bench of Larger strength is binding on any subsequent bench of lesser or co-equal strength. It is settled law that a bench of lesser quorum cannot doubt the correctness of the view of the law taken by a bench of a larger quorum.

11. The Apex Court in Central Board of Dawoodi Bohra Community v State of Maharastra reported in (2005)(2) SCC page 673 held as under:

> **"12. Having carefully considered the submissions made by the learned Senior Counsel for the**

parties and having examined the law laid down by the Constitution Benches in the above said decisions, we would like to sum up the legal position in the following terms:

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions:

(i) the abovesaid rules do not bind the discretion of the Chief Justice in whom veststhe power of framing the roster and who can direct any

particular matter to be placed for hearing before any particular Bench of any strength; and

(ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in Raghubir Singh (1989) 2 SCC 754] and Hansoli Devi [(2002) 7 SCC 273]."

12. The Apex Court in the case of Deepak Bajaj v. State of Maharashtra, reported in AIR 2009 SC 628, held that the judgment of a court is not to be read mechanically as a Euclid's Theorem nor as if it was a statute, rather the ratio of the decision has to be understood in the background of the facts of that case.

13. An order of suspension is not considered to be a punishment. The Apex Court in State of Orissa v. Bimal

Kumar Mohanty, reported in (1994) 4 SCC 126 at para 13 observed as follows:

> **"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.

14. The Constitution Bench of the Supreme Court in judgment reported in AIR 1963 Supreme Court PAGE 687 in Khem Chand observed as under:

> ***Suspension of a government servant pending enquiry is a necessary part of the procedure for taking disciplinary action against him; and such action is necessary in the interest of the general public for serving whose interests the government machinery exists and functions.***
>
> ***In V.P. Gidroniya reported in 1970 (1) SCC Page 362 , the Constitution bench of the Supreme Court held that suspending an employee, from performing the duties of his office, is an implied term in every contract of employment; when an employee is suspended in this sense, it means that the employer merely issues a direction to him that he should not do the service required of him during a particular period; in other words, the employer is regarded as issuing an order to the employee, which, because the contract is subsisting, the employee must obey.***

15. In Ashok Kumar Aggarwal reported in 2013 (16) SCC page 147, the Supreme Court held:--

> **".....The scope of interference by the Court with the order of suspension has been examined by the**

Court in a large number of cases, particularly in State of M.P. v. Shardul Singh : 1993 Supp (3) SCC 483, P.V. Srinivasa Sastry v. Comptroller & Auditor General : (2001) 3 SCC 414, ESI v. T. Abdul Razak [1983] 1 SCR 828 : (1983) 1 SCC 124, Kusheshwar Dubey v. Bharat Coking Coal Ltd.: (1966) 3 SCR 682 : AIR 1966 SC 1942, Delhi Cloth & General Mills Ltd. v. Kushal Bhan AIR 1955 SC 549, U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan (1975) 3 SCC 503 : AIR 1975 SC 984, State of Rajasthan v. B.K. Meena (1968) 1 SCR 111 : AIR 1967 SC 1910, Prohibition and Excise Deptt. v. L. Srinivasan28 and Allahabad Bank v. Deepak Kumar Bhola : 1998 (4) SCC 154, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed

only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial cannot be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question...."

16. The Constitution Bench of the Apex court in a judgment reported in AIR 1964 Supreme Court, page 787 in R.P.Kapur held as under:

> **"that the public servant may be suspended pending investigation, enquiry or trial relating a criminal charge; if the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted; even in case of acquittal, disciplinary proceedings may follow where the acquittal is other than honourable; the usual practice is that where a public servant is being tried on a criminal charge, the Government postpones holding a departmental enquiry, and awaits the result of the criminal trial; and therefore suspension, during investigation, enquiry or trial relating to a criminal charge, is intimately related to disciplinary matters."**

17. The Apex Court in Sanjiv Rajan judgment reported in 1993 Supp. (3) SCC 483 observed as follows:

> **".....In matters of this kind, it is advisable that the concerned employees are kept out of mischiefs range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension. Whether the employees should or should not continue in their**

office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question. In the present case, before the preliminary report was received, the Director was impressed by the first respondent employees representation. However after the report, it was noticed that the employee could not be innocent. Since this is the conclusion arrived at by the management on the basis of the material in their possession, no conclusions to the contrary could be drawn by the Court at the interlocutory stage and without going through the entire evidence on record. In the circumstances, there was no justification for the High Court to revoke the order of suspension.

18. The Apex Court in Deepak Kumar Bhola reported in 1998 (4) SCC 154, observed as under:--

"…….We are unable to agree with the contention of the learned counsel for the respondent that there has been no application of mind or the objective consideration of the facts by the appellant before it passed the orders of suspension. As already observed, the very fact

that the investigation was conducted by the CBI which resulted in the filing of a charge-sheet, alleging various offences having been committed by the respondent, was sufficient for the appellant to conclude that pending prosecution the respondent should be suspended. It would be indeed inconceivable that a bank should allow an employee to continue to remain on duty when he is facing serious charges of corruption and misappropriation of money. Allowing such an employee to remain in the seat would result in giving him further opportunity to indulge in the acts for which he was being prosecuted. Under the circumstances, it was the bounden duty of the appellant to have taken recourse to the provisions of clause 19.3 of the First Bipartite Settlement, 1966. The mere fact that nearly 10 years have elapsed since the charge-sheet was filed, can also be no ground for allowing the respondent to come back to duty on a sensitive post in the Bank, unless he is exonerated of the charge……."

19. <u>In the judgement of the Apex Court reported in (1996) 3 SCC 157 in L. Srinivasan</u>, the respondent, while working as Assistant Section Officer, Home, Prohibition and Excise Department, was placed under suspension. Departmental inquiry was in process.

Charge-sheet was laid for prosecution and the trial of the case was pending. The Tamil Nadu Administrative Tribunal set aside the departmental enquiry and quashed the suspension and the charge-sheet on the ground of delay in initiation of disciplinary proceedings. It is in this context that the Supreme Court held:

> **...In the nature of the charges, it would take a long time to detect embezzlement and fabrication of false records which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge levelled against the charged officer since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum dehors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension**

order and charges even at the threshold. We are coming across such orders frequently putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied……."

20. A Full Bench of the High Court at Madras in Judgement delivered on 15.03.2022 in W.P.Nos.2165/ 2015 and 21628/2018 in a reference by the learned Single Judge on account of two conflicting Judgements delivered by the Division Bench on a challenge to the order of suspension answered the said reference as under :

21. For the foregoing reasons, the reference is answered by holding that: (i) The judgment of the Apex Court in the case of Ajay Kumar Choudhary, supra, does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges/ chargesheet has not been served within three months, or if memorandum of charges/charge-sheet is served without reasoned order of extension. (ii) The judgment in R.Balaji, supra, has no reference to the earlier judgments of co-equal strength and is thereby

rendered per incuriam. (iii) The issue of challenge to the order of suspension should be analyzed on the facts of each case, considering the gravity of the charges and the rules applicable. (iv) Revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed or directed as a matter of course. It has to be based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges/charge-sheet.

22. None of the Constitution bench judgments of the Supreme Court in Khem Chand reported in AIR 1963 Supreme Court page 687; V.P. Gidroniya reported 1970 (1) SCC 362 and R.P. Kapur reported in AIR 1964 SC 787, were noticed in the latter two bench judgment of the Supreme Court in Ajay Kumar Choudhary. Taking into consideration the law laid down in these Judgements by the Constitution bench of the Apex Court and further in view of the law laid down in various judgements of the Supreme Court referred to and discussed above this Court is of the firm opinion that the prayer sought for by the Writ Petitioner cannot

be granted. However taking note of the fact that the order of suspension is dated 24-05-2018, it was expected on the part of respondents to have acted with promptitude by conducting the enquiry within a reasonable time period, therefore in the interest of justice the Writ Petition is disposed of directing the respondents to conclude the disciplinary proceedings initiated against the petitioner expeditiously i.e., within a period of '3' weeks from the date of receipt of the copy of the order.

Miscellaneous applications, if any, pending shall stands closed.

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SUREPALLI NANDA, J

Date: 14.11.2022
Note: L.R. Copy to be marked
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