



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No.15726/2024

Pankaj Bhootra S/o Sh. Bhanwar Lal Bhootra, Aged About
41 Years, R/o 324, Surya Nagar, Mahesh Nagar, Near
Riddhi Siddhi Circle, Lal Kothi, Gopalpura Bypass, Jaipur.

-----Petitioner

Versus

1. State of Rajasthan, through Principal Secretary,
Department of Gopalan, Secretariat, Rajasthan,
Jaipur.
2. The Rajasthan Cooperative Dairy Federation Limited,
through its Managing Director and Administrator,
Saras Sankul, JLN Marg, Jaipur - 302017.
3. General Manager (Personnel and Administration),
RCDF, through its Managing Director and
Administrator, Saras Sankul, JLN Marg, Jaipur -
302017.
4. Financial Advisor, RCDF, through its Managing
Director and Administrator, Saras Sankul, JLN Marg,
Jaipur - 302017.

-----Respondents

For Petitioner(s)	:	Mr. Shobhit Tiwari with Mr. Pushpender Singh Tanwar and Mr. Vishwas Fatehpuria
For Respondent(s)	:	Mr. Vedant Sharma

JUSTICE ANOOP KUMAR DHAND

Reserved on	24/10/2024
Pronounced on	07/11/2024
Reportable	

Order

1. By way of filing of this writ petition, a challenge
has been made to the impugned order dated 21.09.2024



passed by the respondents by which the petitioner has been placed under suspension in contemplation of the Departmental Enquiry initiated against him.

2. Counsel for the petitioner submits that prior to participation in the process of selection, the petitioner was serving with the State Government and after participation in the process for selection, he was found eligible and accordingly, appointment was offered to him by the selection Board. Counsel submits that the appointment of the petitioner was assailed by one Jitendra Khandal by way of filing SB Civil Writ Petition No.14285/2021 before this Court, wherein an allegation was levelled against the petitioner that he got appointment on the basis of the forged documents. Counsel submits that reply to the aforesaid writ petition was submitted by the respondents in favour of the petitioner and a specific stand was taken by them that the successful candidates in the written examination were called for interview and thereafter, the selection list was prepared and the petitioner was called to clarify his position regarding the experience of more than 10 years, in FMGC/Cooperative Committee/Institution and his documents relating to experience and the qualification were also examined. Counsel submits that after taking into consideration the documents furnished by the petitioner including the experience certificate, the respondents were satisfied and accordingly, appointment was offered to the petitioner on the basis of his merit. Counsel submits that now the respondents cannot take a U-Turn from their stand,





which has been taken in favour of the petitioner in the aforesaid petition submitted by one of the rival candidates- Jitendra Khandal before this Court. Counsel submits that during pendency of the aforesaid writ petition, a Committee of four members was constituted to examine the matter again and a decision with regard to recommendation of the petitioner's appointment was taken unanimously by all the four members of the Committee certifying that the experience certificate furnished by the petitioner was correct and accordingly, recommendation was made in favour of the petitioner for his appointment. Counsel submits that Preliminary Enquiry has been conducted against the petitioner, wherein he has furnished his explanation. Counsel submits that truth and veracity of the allegations, levelled against the petitioner, is yet to be examined by the authority at the time of conclusion of the Domestic Enquiry, but without waiting for the appropriate stage, the order impugned has been passed to suspend the petitioner, which has no relevance because the petitioner is not influencing the Departmental Enquiry or any of the witnesses. Counsel submits that the decision of Committee was taken collectively by four members, but now the respondents have chosen to take action against only one member i.e. Mr. L.C. Balai, Managing Director, (Administration and Personnel). There is no justification on the part of the respondents for not taking any action against rest of the three members. Counsel further submits that the reply submitted on behalf of the respondents in the writ petition submitted by the





Jitendra Khandal has been signed under oath and affirmation by one Rajneesh Kumar Sharma, Assistant Manager (Legal) RCDF, but no action has been taken against him. Counsel submits that after serving the Government for a considerable time, the petitioner joined the services of RCDF and his lien in the earlier department has expired and after confirmation of the services of the petitioner by RCDF, now the impugned suspension order would seriously prejudice the career of the petitioner, hence, under these circumstances, interference of this Court is warranted.

3. Per contra, learned counsel for the respondents opposed the arguments raised by counsel for the petitioner and submitted that in all 10 candidates were selected for appointment, but the name of the petitioner was later on added as selected candidate in the selection list at Serial No.11. Counsel submits that it was found that except the 10 selected candidates, the petitioner's name was not recommended for appointment initially, but at a later stage, in the note-sheets of the department the line "क्र.सं. 1 पर वर्णित श्री पंकज भूतड़ा को छोड़कर शेष सभी 10 चयनित अभ्यर्थियों को नियुक्ति हेतु प्रस्ताव (Offer of appointment) जारी करने की अभिशंका करती है।" has been erased by using white correcting fluid and offer of appointment was given to the petitioner. Counsel submits that an incorrect reply on behalf of the respondents was submitted and subsequently, when this mistake was realized, a Preliminary Enquiry was conducted, wherein prima facie allegations against the petitioner were found to be proved and accordingly, a decision was taken whereby



not only the petitioner was placed under suspension but the Managing Director- Mr. L.C. Balai, was also placed under suspension. Counsel submits that looking to the nature of allegations levelled against the petitioner, he has been placed under suspension, till conclusion of enquiry. Lastly, counsel for the respondents submits that a letter has been sent to the Special Operation Group of Police to investigate the scam, hence, under these circumstances, interference of this Court is not warranted and the petition is liable to be rejected.

4. Heard and considered the submissions made at Bar and perused the material available on the record.

5. Perusal of the record indicates that an advertisement was issued by the respondents on 29.01.2021 for appointment on the post of General Manager (Marketing). As per the terms and conditions of the advertisement, a candidate was required to possess the degree of MBA/ Equivalent Degree/ Degree in Management/ PG Diploma/ Diploma in Management with 10 years experience in responsible position in marketing function of FMCG/ Cooperative Concern having an annual turnover of Rs.25 Crores or more.

6. The petitioner participated in the above recruitment process for getting appointment on the post of General Manager (Marketing). As per the petitioner in all 11 persons were selected including him while as per respondents in all 10 persons were selected excluding the petitioner. This fact was mentioned in the official note-sheet



Para No.32/N at serial No.1. The relevant extract is mentioned as under:-



"The Personnel and Administration Department, on behalf of the Cooperative Recruitment Board, has verified the documents of the 10 selected candidates, excluding Mr. Pankaj Bhootra, listed in Para 32/N with the result uploaded on the Cooperative Recruitment Board's website. The General Manager Committee recommends issuing an offer of appointment to the remaining 10 selected candidates, excluding Mr. Pankaj Bhootra, who is listed first in sequence in Para 32/N, i.e. before applying White Correction Fluid, where 10 selected candidates were eligible for the offer of appointment, after this the number becomes 11 selected candidates."

But, subsequently white correction fluid was applied/used on certain lines of this note-sheet and accordingly, appointment was given to the petitioner.

7. The appointment of the petitioner was assailed by one Jitendra Khandal before this Court by way of filing S.B. Civil Writ Petition No.14286/2021, wherein reply was submitted on behalf of the respondents before this Court, in favour of the petitioner and the said petition is still pending adjudication on merits.

8. Now, a Preliminary Enquiry has been conducted in the matter by a Committee of three Members and the following conclusion has been drawn on 20.09.2024 and said conclusion in English translation is extracted as under:-



“Conclusion:-

1. The appointment date mentioned by Shri Bhootra in his online application was 12.01.2011, but the actual date is 12.01.2012. At first glance, it appears that Shri Bhootra has mentioned 10 years of service with the Rajasthan State Food and Civil Supplies Corporation Ltd. as part of his work experience, whereas in reality, it is only 9 years. Therefore, it cannot be ruled out that Shri Bhootra intentionally presented this information to appear for the exam and the subsequent interview; otherwise, he would have been disqualified during the review of his application for the post of General Manager (Marketing).

2. The validity of the degree held by Shri Bhootra depends on the verification from the relevant institution.

3. For General Manager (Marketing) in addition to 10 years of work experience, it was also necessary for the candidate to have a “Position in marketing function of an FMCG/Cooperative concern having an annual turnover of Rs. 25 Crore or more” Based on the information provided by the complainant under the Right to Information (RTI) Act, it can be prima facie concluded that the Rajasthan State Food Civil Supplies Corporation does not fall into this category. However, it would be appropriate to obtain official verification from the RCDF (Rajasthan Cooperative Dairy Federation). If the Corporation is not classified under FMCG, Shri Bhootra would clearly be ineligible for the post of General Manager (Marketing).

4. Shri Bhootra worked as a Manager, Civil Supplies, based on the experience certificate





issued by the Rajasthan State Food Civil Supplies Corporation. However, in his application, he described his work as "administrative" in nature. Therefore, it cannot be proven that Shri Bhootra was involved in any marketing-related activities within the Rajasthan State Food Civil Supplies Corporation. The documents related to this certificate do not verify that the concerned firm had an annual turnover of Rs. 25 Crore.

5. Kenfin Homes Ltd. is not an FMCG company, and Shri Bhootra worked there as a Probationary Officer. Moreover, there is no indication that Shri Bhootra undertook any marketing-related activities at the company.

6. The presence of white correcting fluid on several pages of the appointment-related file suggests that the proposal for the 10 selected candidates was initially presented as a recommendation by the General Manager Committee, and then altered to create forged documents. At that time, Shri L.C. Balai was the General Manager (Personnel and Administration). The Personnel and Administration Department is responsible for maintaining such appointment records, and the confidentiality and security of these records also rest with the General Manager (Personnel & Administration). Therefore, between 14.12.2021 and 27.12.2021, the General Manager (Personnel & Administration) and/or the officials who had access to this file could be held negligent and responsible for this act. If their involvement is proven, they should be held directly accountable for the forged documents. A separate, detailed investigation is



necessary to determine which employees or officers were involved, so that strict disciplinary action can be taken against them, as altering records and preparing forged documents is considered serious misconduct.

This investigation report is submitted for your review and further necessary action as per the proposed recommendations.”



9. On the basis of above Preliminary Enquiry, the respondents have initiated Departmental Enquiry against the petitioner by issuing him charge-sheet and he has been placed under suspension vide impugned order dated 21.09.2024 and the following order has been passed:-

"Shri Pankaj Bhootra, General Manager (marketing), RCDF, Jaipur is placed under suspension with immediate effect because of the serious nature of departmental inquiry initiated against him pertaining to submission of false and fabricated information as well as documents in relation to his experience. The Zila Dugdh Utpadak Sehkari Sangh Ltd., Kota shall be the headquarter of Shri Bhootra during the suspension period.

This order is issued after receiving approval of Managing Director, RCDF, Jaipur.”

10. Feeling aggrieved and dissatisfied by the above order of suspension, the petitioner has approached this Court invoking its jurisdiction contained under Article 226 of the Constitution of India.

11. The Rajasthan Dairy Cooperative Federation Employees (Disciplinary Action and Appeals) Regulation,



1980 (for short, "the Regulation of 1980") deals with the provisions of suspension which reads as under:-

"10. Suspension :

a) An officer or employee may be placed under suspension when :

i. An enquiry into grave charge of suspected disobedience, malpractice or misappropriation is contemplated or is pending or during enquiry his continuance in service is considered to be detrimental to the interest of the Federation or;

ii. A complaint against him on any criminal offence involving moral turpitude is under investigation or trial and if such suspension is necessary in the public interest.

b) An order of suspension under clause (a) may be revoked at any time by the authority making the order by any authority to which it is subordinate."

12. The duties, responsibilities, conduct and discipline of an employee in public service are governed by service Rules/ Regulations. On allegation of misconduct, employer is entitled to take disciplinary action which may result in dismissal or removal from service of the delinquent employee. The power to suspend an employee flows out of power to take disciplinary action on allegation of misconduct. The Conduct Rules/ Regulations delineate the power of suspension and the competent authority to exercise such power. When an allegation of misconduct





comes to the notice of disciplinary authority and in the opinion of disciplinary authority, if it is not desirable to entrust duties to the delinquent employee, while enquiry/investigation is in progress/ proposed, the competent authority may place his service under suspension. Suspension of service results in temporary withdrawal from duties and responsibilities of the delinquent employee. During the period of suspension, the relationship of master and servant subsists; the employee continues to be on the rolls of employment but is not entitled to take up any other assignment. He is still amenable to disciplinary control of the employer for any other misconduct also. He is only disabled from attending his work. He is not entitled to draw pay and allowances. For his sustenance during the period of suspension, he is paid allowance which in normal parlance is called 'subsistence allowance'.

13. Ordinarily, an employee's services can be placed under suspension in the following contingencies:

- a) Where disciplinary proceedings are contemplated or pending.
- b) Where the disciplinary authority was of the prima facie opinion that the employee is engaged in activities prejudicial to the interest and security of the State;
- c) Where the case against him in respect of criminal offence is under investigation, enquiry or trial;
- d) Pending investigation/ enquire into allegations, it is found not desirable to



continue the employee in service in public interest;

e) Such continuation in service during pending enquiry/ investigation is likely to prejudice the investigation, trial, enquiry; there is a possibility of tampering of documents, influencing the witnesses, etc;

f) It is also permissible to suspend an employee if his continuation is likely to cause /encourage indiscipline in the organization.

14. In matters of suspension, there are two competing interests. On the one side is employer's eagerness to ensure transparent operation of public service and to enforce discipline. Therefore, he would mince no words to take disciplinary action when any misconduct comes to his notice. When allegations are grave/ disobedience is palpable, it is also in public interest to place such employee under suspension. On the other hand is the concern of the employee. It is an accepted fact that though suspension does not takeaway the employment and is not a punishment per se, but it has deleterious effect on the employee and his family and attaches stigma as he would be looked down in the community whenever person is placed under suspension. The suspension from service continues for months together and in many cases for years together.

15. In matters of suspension, the exercise of extra-ordinary power of judicial review vested in this court under Article 226 of the Constitution of India is very limited. Scope of consideration is limited to the extent of examining the





competence of the authority who places an employee under suspension; arbitrary exercise of power; selective suspension; allegations are frivolous/ technical in nature; suspension was wholly unwarranted; and there was no application of mind. In matters of suspension, each case has to be examined in the factual back ground of given case.

16.1 At this stage, it is necessary to parade briefly the precedent pronouncements of Supreme Court and this Court on the issue of suspension.

16.2. In **State Of Orissa Vs Bimal Kumar Mahanty** reported in **1994 (4) SCC 126** the Hon'ble Supreme Court laid down parameters of suspension and scope of judicial review. The Supreme Court held:

“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 getaway 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.” (Emphasis supplied)

16.3. In **Union of India v. Ashok Dumar Aggarwal** reported in **2013 (16) SCC 147**, the Hon'ble Supreme Court held that:-



“21.The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or **indiscipline or refusal to carry out the orders of superior authority** are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

22. In view of the above, the law on **the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available.** It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or



dismissal from service, or reduction in rank, etc. (emphasis supplied).

27. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, **it is not desirable that the court may find out as to which version is true when there are claims and counterclaims on factual issues.** The court cannot act as if it is an appellate forum de hors the powers of judicial review.

29.However, as the suspension order constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospects of promotion and also carried a stigma, an order of suspension should not be made in a perfunctory or in a routine and casual manner but with due care and caution after taking all factors into account.”(emphasis supplied)

17. The principles that can be culled out from precedent decisions are:

- (i) The real effect of the order of suspension is that employee continues to be a member of service of employer but is not permitted to work and further during the period of suspension he is paid subsistence allowance.
- (ii) It would not be as an administrative routine or an automatic order to suspend an employee and not to be lightly passed. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee.
- (iii) The suspension must be a step in aid to the ultimate result of the investigation or inquiry.





(iv) The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground, as vindictive and in misuse of power.

(v) Suspension should be made only when there is a strong prima facie case of delinquency.

(vi) Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered.

(vii) order of suspension can be resorted to pending further investigation or contemplated disciplinary action only on grave charges.

(viii) Competent Authority should take into consideration relevant facts and attendant circumstances as to how far and to what extent public interest would suffer if the delinquent is not placed under suspension.

18. To appreciate the contentions of the learned counsel, having regard to the broad principles noted above, it is necessary to consider the provisions in Regulation 10 of the Regulations, 1980. Regulation 10 vests power in the competent authority to place an employee under suspension pending investigation or enquiry into grave charges and such suspension is necessary in the interest of the Federation. This Regulation also guides the disciplinary authority when to resort to suspension.

19. The Court is required to check the legality of suspension based upon the following that:

- A. Whether suspension was resorted to enforce discipline;
- B. To Convey to all the employees that dereliction of duty cannot be tolerated;





C. To ensure that employee would not create impediment in smooth conduct of enquiry and in the larger public interest, it is necessary to suspend the employee.

D. Whether such power is exercised not as an administrative routine or an automatic consequence of alleged misconduct;

E. Whether there was careful consideration of the issue and in right perspective and due assessment of misconduct of employee.

20. On many occasion the issue of placing an employee under suspension came before Hon'ble Supreme Court and it has held in the following cases:-

i) In **M. Paul Anthony V. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&C) 810 : 1999 SCC OnLine SC 360:-**

26. To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including Govt. of India and the State Governments. (See: for example, Rule 10 of Central Civil Services (Classification, Control & Appeal) Rules. Even under the General Clauses Act, this right is conceded to the employer by Section 16 which, inter alia, provides that power to appoint includes power to suspend or dismiss.

27. The order of suspension does not put an end to an employee's service and he continues to be a member of the service though he is not permitted to work and is paid only Subsistence Allowance which is less than his salary.



ii. In **State of Orissa Vs. Bimal Kumar Mohantay, (1994) 4 SCC 126**, it has been held :-

"5. We have given our anxious and serious consideration to the respective contentions. True, normally, this Court would not interdict the exercise of the power to pass interim orders by the courts or tribunals, obviously, with the expectation that they exercise the discretionary power with circumspection after weighing pros and cons to subserve the ultimate result of the pending adjudication. The question is whether this is a fit case where the Tribunal itself should have interdicted the orders of suspension when the appointing authority contemplated disciplinary proceedings or pending investigation into the crime.

7. A constitution Bench of this Court three decades age in *RP Kapur v. Union of India* (1964) 5 SCR 431 laid the law that:

"The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled 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 respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of government the employer in the case of government, must be held to be the authority which has the





power to appoint a public servant. On general principle therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him."

8. This Court reiterated the above view in *Balvantrai Ratila v. State of Maharashtra*, (1968) 2 SCR 577 thus:

"The general principle is that an employer can suspend an employee pending an enquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of such suspension. It is now well-settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

It is equally well-settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of appointment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it





could be withheld. In this connection it is important to notice the distinction between suspending the contract of service of an officer and suspending an officer from performing the duties of his office on the basis that the contract is subsisting. The suspension in the latter sense is always an implied term in every contract of service. When an officer is suspended in this sense it means that the Govt. merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as issuing an order to the employee which, because the contract is subsisting, the employee must obey."

9. In *VP Gidronia v. State of M.P.*, (1970) 3 SCR 448) another Constitution Bench of this Court held that:

"The general principle is that if the master has a power to suspend his servant pending an enquiry into his misconduct, either in the contract of service or in the statute or the rules framed thereunder governing the service, an order of suspension passed by the master has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay any wages during the period of suspension. Such a power to suspend the contract of service cannot be implied and therefore, if in the absence of such a power in the contract, statute or rules, an order of suspension is passed by the master it only forbids the servant to work without affecting the relationship of master and servant, and the master will have to pay the servant's wages."

10. This Court in another case titled *Government of India, Ministry of Home Affairs v. Tarak Nath Ghosh*, (1971) 1 SCC 734 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 Govt. 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 :

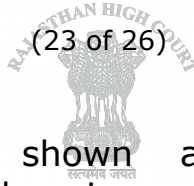
(i) The fact that in other rules of service there is specific provision for an order of suspension even when disciplinary proceedings were contemplated, does not mean that a member of the All India Service should be dealt with differently. It would not be proper to interpret the Rules, which from a self-contained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

11. This Court in UP Rajya Krishi Tupadan Mandi Parishad v. Sanjiv Ranjan, (1993) Supp (3) SCC 483 held that:

"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 passbook 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 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 over-looked 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 inputted 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 enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry 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 enquiry 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 enquiry or contemplated enquiry 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 enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge."

iii. In **Union of India V. Ashok Kumar Aggarwal** reported in **(2013) 16 SCC 147** wherein the Hon'ble Supreme Court at paragraph 26, has inter alia has under:-

".....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 can not 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."



iv. The Supreme Court of India in a case law in **R.P. Kanpur V. Union of India (AIR 1964 SC 787)** has, held as given below:

"On general principles therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him."

21. According to the conclusion of the Preliminary Enquiry report and reasons assigned in the suspension order of the petitioner, prima-facie allegation against the petitioner, that for getting appointment, certain certificates and documents have been fabricated by him and manipulations have also been done in the official note-sheet at Para 33/N by applying white correction fluid and the order impugned has been passed till completion of enquiry.

22. This Court refrains itself from making any comments on the correctness of the allegations levelled in the matter, which may put adverse effect on the enquiry.

23. Looking to the nature of allegations levelled against the petitioner, this Court finds no error in placing him under suspension, which warrants no interference.

24. Accordingly, the writ petition is dismissed. It is made clear that the tenability of the allegations and the



involvement of the petitioner can be gone into during the Departmental Enquiry and this Court has not expressed any opinion on merits of this case at this stage. It is made clear that what is discussed in the above paragraphs is only to appreciate the contentions on behalf of the petitioner on the validity of the order of suspension and there is no expression of opinion by this Court on merits.

25. Needless to observe that the petitioner cannot be kept under suspension for an indefinite period. It is expected from the respondents to complete the Departmental Enquiry against the petitioner expeditiously as early as possible, preferably within a period of four months from the date of receipt of the copy of this order.

26. Stay application and all application(s), pending if any, also stand dismissed.

27. No order as to costs.

(ANOOP KUMAR DHAND),J

KuD/27

