

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Special Appeal No. 576 of 2019

Naresh Kumar

.....Appellant

Vs.

State of Uttarakhand and others

.....Respondents

Chronological list of cases referred:-

1. 2015 (7) SCC 291
2. (2013) 16 SCC 147
3. AIR 1958 AP 35
4. (1971) 1 SCC 734
5. Halsbury's Laws of England, Third Edn., Vol. 25, Article 989, p. 518
6. 2016(3) ALT 727
7. (1970) 1 SCC 362
8. AIR 1968 SC 800
9. AIR 1964 SC 787
10. AIR 1959 SC 923
11. (1994) 4 SCC 126
12. AIR 1968 SC 800
13. AIR 1961 SC 276
14. AIR 1977 SC 1146
15. (1915) 1 KB 698
16. (1922) 2 KB 66
17. AIR 1963 SC 687
18. 1993 Supp (3) SCC 483
19. (1987) 4 SCC 328
20. (1999) 6 SCC 257
21. (1998) 4 SCC 154
22. 1986 (4) SCC 481
23. (1996) 3 SCC 157
24. 1998 (4) SCC 154)
25. (2005) 2 SCC 673
26. (1989) 2 SCC 754
27. AIR 1989 SC 2027
28. AIR 1976 SC 2547
29. AIR 1976 SC 2433
30. 1993 (3) ALT 471
31. AIR 1976 SC 2433
32. 1993 (1) ALT 221
33. (1970) 1 SCC 362

Dated: 18th June, 2019

**Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble Alok Kumar Verma, J.**

Ramesh Ranganathan, C.J. (Oral)

Heard Mr. Tapan Singh, learned counsel for the appellant-writ petitioner, Mr. S.S. Chaudhary, learned Brief Holder for the State of Uttarakhand, Mr. Rakesh Thapliyal, learned Counsel for the second respondent, and Ms. Seema Sah, learned Counsel for the third respondent.

2. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No.2534 of 2018 dated 20.05.2019. The appellant herein filed WPSS No.2534 of 2018 seeking a writ of certiorari to quash the suspension order dated 15.03.2018 passed by the second respondent; and a writ of mandamus commanding the third respondent not to give effect and operation to the order dated 15.03.2018.

3. Facts, to the limited extent necessary, are that the petitioner was a Secretary of Salempur Mahbudh Sadhan Sahakari Samiti Ltd. On 12.03.2018, a complaint was received against him by the District Magistrate, Haridwar wherein it is stated that the writ petitioner, and the Incharge Mr. Nitin Kumar, were not paying the amounts which had been deposited by some individuals. The Branch Manager, District Co-operative Bank Ltd. was directed to look into the matter. Subsequently, on 23.09.2017, the Branch manager (third respondent) constituted a three members enquiry committee to enquire into the matter against certain individuals.

4. The Inquiry Committee conducted a preliminary enquiry, and is said to have opined thereafter that the petitioner was guilty of embezzlement of money. On the basis of this report of the Inquiry Committee, the petitioner was placed under suspension on 15.03.2018. Thereafter on 18.03.2018, an FIR was lodged under Section 409 IPC against the appellant-writ petitioner. This FIR was subjected to challenge by the appellant-writ petitioner in Writ Petition No.529 of 2018; this Court by its order dated 04.04.2018 directed stay of his arrest; the petitioner submitted an application, for payment of subsistence allowance, on 23.05.2018; on the ground that enquiry proceeding had not commenced, regarding the charge of embezzlement, even after four months of his suspension, the petitioner sought his reinstatement by way of two applications; and on the ground that his suspension order was not revoked, and no enquiry was held against him, he invoked the jurisdiction of this Court.

5. In the order under appeal, the learned Single Judge held that suspension is not a punishment; therefore, there is no scope of interference with the impugned order; it was contended by the learned counsel for the appellant-writ petitioner that more than a year had elapsed since he was

placed under suspension, and till date no charge sheet had been served upon him; and he had also contended that the competent authority should be directed to expedite the inquiry. The writ petition was disposed of directing the Disciplinary Authority to issue the charge sheet to the petitioner within three weeks from the date of production of a certified copy of this order. The petitioner was directed to file his reply to the charge sheet within three weeks thereafter. The Inquiry Officer was directed to complete the enquiry within six weeks thereafter, and the Competent Authority was directed to pass final orders within two weeks thereafter. With these directions, the writ petition was disposed of. Aggrieved thereby, the present appeal.

6. Mr. Tapan Singh, learned counsel for the appellant-writ petitioner, places reliance on a two Judge bench judgement of the Supreme Court, in **Ajay Kumar Chaudhary vs. Union of India**¹, to submit that, since no charge sheet has been issued to the petitioner within three months of his being placed under suspension, he was required to be reinstated into service in terms of the aforesaid judgment; and while the appellant-writ petitioner can be transferred elsewhere, in case the authority so deems it necessary, he cannot be continued under suspension beyond the period of three months, unless a charge sheet is issued in the interregnum.

7. As the order of suspension was passed on 15.03.2018, and more than a year has elapsed thereafter, despite which no charge sheet has been issued till date, the judgment of the two Judges Bench in **Ajay Kumar Chaudhary**¹, no doubt, supports the submission, urged on behalf of the appellant-writ petitioner, that failure to issue a charge sheet, within three months of placing an employee under suspension, is fatal and would require the order of suspension to be set aside.

8. Mrs. Seema Sah, learned counsel for third respondent, would submit that a charge sheet has now been issued. However, no copy thereof has been placed on record. On the other hand Mr. Tapan Singh, learned counsel for the appellant-writ petitioner, would submit that he has been instructed to state that the appellant-writ petitioner was not served with a charge sheet even till yesterday i.e. 17.06.2019. It is wholly unnecessary for

us to dwell on this issue any further, since it does not appear to be in dispute that no charge sheet had been issued to the appellant-writ petitioner for a period of for more three months from the date on which he was placed under suspension on 15.03.2018.

9. While the two Judge bench judgment of the Supreme Court, in **Ajay Kumar Chaudhary**¹, has no doubt held that failure to issue of a charge sheet to the delinquent employee within three months from the date on which he was placed under suspension is fatal, and he would be entitled for reinstatement, the question which necessitates examination is whether the High Court is bound to follow the two Judge bench judgment of the Supreme Court, in **Ajay Kumar Chaudhary vs. Union of India**, when the law declared by the earlier Constitution Bench judgments of the Supreme Court have held to the contrary.

10. Suspension means the action of debarring, for the time being, from a function or privilege or temporary deprivation of working in the office. (**Union of India v. Ashok Kumar Aggarwal**²). Suspension, according to the Oxford Dictionary, means the action of suspending, or the condition of being suspended; the action of debarring or state of being debarred, especially for a time, from a function or privilege; temporary deprivation of one's office or position. One of the meaning of the word "suspension", as given in the Chambers 20th dictionary, is: to defer, to debar from any privilege, office, emolument etc., for a time. Suspension is, ordinarily, a temporary act. (**Dr. G. Thimma Reddy v. State of Andhra**³; **Govt. of India, Ministry of Home Affairs v. Tarak Nath Ghosh**⁴; **Halsbury's Laws of England, Third Edn., Vol. 25, Article 989**⁵; **Buddana Venkata Murali Krishna vs. State of A.P. and Ors**⁶).

11. A public servant may be suspended as a mode of punishment or he may be suspended during the pendency of an enquiry against him if the order appointing him, or the statutory provisions governing his service, provide for such suspension. He may merely be forbidden from discharging his duties during the pendency of an enquiry against him, which act is also called suspension. The right to suspend as a measure of punishment, as well

as the right to suspend the contract of service during the pendency of an enquiry, are both regulated by the contract of employment or the statutory provisions regulating the conditions of service. But the last category of suspension is the right of the master to forbid his servant from doing the work, which he had to do, under the terms of the contract of service or the provisions governing his conditions of service, at the same time keeping in force the masters' obligations under the contract. In other words the master may ask his servant to refrain from rendering his service, but he must fulfil his part of the contract. (**V.P. Gidroniya v. State of M.P.**⁷; **B.R. Patel v. State of Maharashtra**⁸ and **R.P. Kapur v. Union of India**⁹). So far as suspension as a punishment is concerned, it is a disciplinary matter. (**R.P. Kapur**⁹ and **Buddana Venkata Murali Krishna**⁶).

12. Suspension, in the present case, is not a substantive punishment, and is an interim order pending enquiry/criminal proceedings. [**Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan**¹⁰]. Suspension of this kind is not a punishment, but only forbids or disables the petitioner from discharging the duties of his office or the post held by him. In other words it is to restrain him from availing further opportunities of perpetrating the alleged misconduct, or to remove the impression among members of the service that dereliction of duty would pay and the offending employee can get away 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 affording the delinquent the opportunity in office to impede the progress of the investigation or inquiry etc. (**State of Orissa vs. Bhimal Kumar Mohanty**¹¹ and **Buddana Venkata Murali Krishna**⁶).

13. An order of interim suspension can be passed against the employee while an inquiry/investigation is pending against him. Suspending an officer, and thereby disabling him from performing the duties of his office on the basis that the contract is subsisting, is always an implied term in every contract of service. When an officer is suspended, in this sense, it means that the Government 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. (**Balvantrai Ratilal Patel v. State of Maharashtra**¹²; **T. Cajee v. U. Jormanik Siem**¹³; **R.P. Kapur**⁹; **Bhimal Kumar Mohanty**¹¹; **V.P. Gidroniya**⁷; **Jammu University v. D.K. Rampal**¹⁴ and **Buddana Venkata Murali Krishna**⁶). Where the power to suspend is provided for 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 his full salary and allowances. (**Balvantrai Ratilal Patel**¹²; **Hanley v. Pease & Partners, Ltd.**¹⁵; **Wallwork v. Fielding and Boston Deep Sea Fishing and Ice Co. v. Ansell**¹⁶ and **Buddana Venkata Murali Krishna**⁶).

14. If the order of suspension is a valid order, it has suspended the contract of service and the government servant is entitled to receive only such subsistence allowance as might be payable under the rules and regulations governing his terms and conditions of service. (**D.K. Rampal**¹⁴). As an employer can suspend an employee pending an inquiry into his conduct, the only question that can arise, on such suspension, will relate to the payment during the period of such suspension. If there is a provision in the Rules providing for the scale of payment during suspension, the payment would be in accordance therewith. 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. (**R.P. Kapur**⁹; **V.P. Gidroniya**⁷; **U. Jormanik Siem**¹³; **Balvantrai Ratilal Patel**¹²; **Tarak Nath Ghosh**⁴; **Bhimal Kumar Mohanty**¹¹ and **Buddana Venkata Murali Krishna**⁶).

15. An order of suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority should also keep in mind the public interest of the impact of the delinquents' continuance in office while facing departmental inquiry or trial of a criminal charge. (**Ashok**

Kumar Aggarwal²; Bhimal Kumar Mohanty¹¹; R.P. Kapur⁹; Balvantrai Ratilal Patel¹² and Buddana Venkata Murali Krishna⁶). The importance and necessity of proper disciplinary action being taken against government servants for inefficiency, dishonesty or other suitable reasons, cannot be over emphasised. While such action may be against the immediate interest of the government servant, yet it is absolutely necessary in the interests of the general public for serving whose interests the government machinery exists and functions. Suspension of a government servant, pending an enquiry, is a necessary part of the procedure for taking disciplinary action against him. (**Khem Chand v. Union of India¹⁷**).

16. Ordinarily, a government servant is placed under suspension to restrain him from availing the further opportunity to perpetrate the alleged misconduct or to scuttle the inquiry or investigation or to win over the witnesses or to impede the progress of the investigation or inquiry, etc. It would also remove the impression, among members of the service, that dereliction of duty would pay. (**Ashok Kumar Aggarwal²; Bhimal Kumar Mohanty¹¹ and Buddana Venkata Murali Krishna⁶**). When serious allegations of misconduct are imputed against a member of a service, normally it would not be desirable to allow him to continue in the post where he is functioning. The government may rightly take the view that an officer, against whom serious imputations are made, should not be allowed to function anywhere before the matter has been finally set at rest after proper scrutiny and holding of departmental proceedings. (**Tarak Nath Ghosh⁴**). The purpose of suspension is generally to facilitate a departmental enquiry and to ensure that, while such enquiry is going on - it may relate to serious lapses on the part of a public servant, he is not in a position to misuse his authority in the same way in which he might have been charged to have done so in the enquiry. (**R.P. Kapur⁹ and Buddana Venkata Murali Krishna⁶**).

17. The effect on public interest, due to the employees' continuation in office, is also a relevant and determining factor. 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 advantage of his position. At this stage, it is not desirable for the court to find out as to which version is true when there are claims and counter claims on factual issues. (**Ashok Kumar Aggarwal**² and **Buddana Venkata Murali Krishna**⁶). No conclusion can be arrived at without examining the entire record. It is always advisable to allow disciplinary proceedings to continue unhindered. If he is exonerated, he would then be entitled to all the benefits from the date of the order of suspension. (**U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan**¹⁸; **Bhimal Kumar Mohanty**¹¹ and **Buddana Venkata Murali Krishna**⁶). The usual ground for suspension, pending a criminal proceeding, is that the charge is connected with his position as a government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. In such a case a public servant may be suspended pending investigation, enquiry or trial relating to a criminal charge. (**R.P. Kapur**⁹; **Buddana Venkata Murali Krishna**⁶).

18. The power of suspension should, however, not be exercised in an arbitrary manner and without any reasonable ground or as a vindictive misuse of power. A suspension order cannot be actuated by mala fides, arbitrariness, or be passed for an ulterior purpose. (**Ashok Kumar Aggarwal**²; **Buddana Venkata Murali Krishna**⁶). An order of suspension should not be passed in a perfunctory or in a routine and casual manner, but with due care and caution after taking all factors into account. (**Ashok Kumar Aggarwal**²; **Buddana Venkata Murali Krishna**⁶). It should be made after consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The authority should also take into account all 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. (**Ashok Kumar Aggarwal**²; **Buddana Venkata Murali Krishna**⁶). Ordinarily, an order of suspension is 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 it, on application of mind by the

disciplinary authority. (**Ashok Kumar Aggarwal²**; **Bhimal Kumar Mohanty¹¹** and **Buddana Venkata Murali Krishna⁶**).

19. Whether the employee should or should not continue in office during the period of inquiry is a matter to be assessed by the concerned authority. Ordinarily, the Court should not interfere with orders of suspension unless they are passed malafide, and without there being even prima facie evidence on record connecting the employee with the misconduct in question. (**Sanjiv Rajan vs. Director, Rajya Krishi Utpadan Mandi Parishad and another¹⁸**). The court cannot act as if it is an appellate forum de hors the power of judicial review. (**Ashok Kumar Aggarwal²**). The Court or the Tribunal must consider each case on its own facts, and no general law or formula of universal application can be laid down in this regard. (**Ashok Kumar Aggarwal²**; **Bhimal Kumar Mohanty¹¹** and **Buddana Venkata Murali Krishna⁶**). 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. The authority should also keep in mind the public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial on a criminal charge. (**Bhimal Kumar Mohanty¹¹**; **Buddana Venkata Murali Krishna⁶**).

20. Bearing these principles in mind, let us now examine the submission of Sri Tapan Singh, learned counsel for the appellant, that, in view of the law declared by the Supreme Court, in **Ajay Kumar Choudhary¹**, and since neither a charge memo was issued to the petitioner nor a charge sheet filed in the criminal case within 90 days of his being placed under suspension, the order of suspension stands automatically revoked.

21. Where there is power to suspend under a statute, or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant. (**Balvantrai Ratilal Patel¹²**; **Bhimal Kumar Mohanty¹¹** and **Buddana Venkata Murali**

Krishna⁶). The Supreme Court, in **Ajay Kumar Choudhary**¹, drew a distinction between cases where a charge sheet is filed within 90 days of the order of suspension, and cases where it is not. The latter has been held to result in putting to an end the order of suspension, while the former has been held to require a reasoned order, extending the period of suspension, to be passed by the Government. However, in **Tarak Nath Ghosh**⁴, the Supreme Court held that, in principle, there is no difference between the position of an officer against whom definite charges have been framed to which he is required to put in his written statement and a situation where, on receipt of allegations of grave misconduct against him, the Government is of opinion that it would not be proper to allow the officer concerned to function in the ordinary way. Again, in **Ashok Kumar Aggarwal**², the Supreme Court held that the delinquent cannot be considered to be any better off, after the charge-sheet has been filed against him in the Court on conclusion of the investigation, than his position during the investigation of the case itself.

22. After referring to the earlier Judgments in **O.P. Gupta vs. Union of India**¹⁹, where it was held that suspension of an employee was injurious to his interests and must not be continued for an unreasonably long period and, therefore, an order of suspension should not be lightly passed; to **K. Sukhendar Reddy v. State of A.P.**²⁰, which castigated selective suspension perpetuated indefinitely in circumstances where other persons involved had not been subjected to any scrutiny; and **State of A.P. v. N. Radhakishan**²¹, wherein it was observed that it would be fair to make the assumption of prejudice if there was unexplained delay in the conclusion of proceedings; the Supreme Court, in **Ajay Kumar Choudhary**¹, observed:--

".....Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this

excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement.

It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in **Raghubir Singh vs. State of Bihar**²², and more so of the Constitution Bench in **Antulay**, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of 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....." (emphasis supplied)

23. As reliance was placed by the Supreme Court, in **Ajay Kumar Choudhary**¹, on the earlier decision in **O.P. Gupta**¹⁹, it is necessary to take note of the law declared therein. In **O.P. Gupta**¹⁹, the Supreme Court held that there is no presumption that the Government always acts in a manner which is just and fair; there was no occasion to protract the departmental inquiry for a period of 20 years, and keeping the appellant under suspension for a period of nearly 11 years, unless it was actuated with the malafide intention of subjecting him to harassment; while the charge framed against the appellant was serious enough to merit his dismissal from service, the departmental authorities were not in a position to substantiate the charge; but that was no reason for keeping the departmental proceedings alive for a period of 20 years, and not to have revoked the order of suspension for over 11 years; an order of suspension of a government servant does not put an end to his service under the Government; and he continues to be a member of the service inspite of the order of suspension.

24. Unlike in **O.P. Gupta**¹⁹, where the government servant was kept under suspension for more than eleven years, in the case on hand the petitioner was placed under suspension around a year ago. Long periods of suspension does not make the order of suspension invalid. (**Ashok Kumar Aggarwal**²). Ordinarily, when serious imputations are made against the conduct of an officer, the disciplinary authority cannot immediately draw up the charges. Considerable time may elapse between receipt of imputations against an officer, and a definite conclusion by a superior authority, that the circumstances are such that definite charges can be levelled against the officer. Whether it is necessary or desirable to place the officer under suspension, even before definite charges have been framed, would depend upon the circumstances of the case and the view which is taken by the Government concerned. (**Tarak Nath Ghosh**⁴). It is possible that, in some cases, the authorities do not proceed with the matter as expeditiously as they ought to, which results in prolongation of the sufferings of the delinquent employee. But the remedy in such cases is either to call for an explanation from the authorities in the matter and, if it is found unsatisfactory, to direct them to complete the inquiry within a stipulated period and to increase the

suspension allowance adequately. The Court has to examine each case on its own facts and decide whether the delay in serving the charge-sheet and completing the inquiry is justified or not. (**Sanjiv Rajan**¹⁸; **Buddana Venkata Murali Krishna**⁶).

25. 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 the order of suspension. While exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if he is satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. In case the Court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have, and it results in prolongation of suffering of the delinquent employee, the Court may issue directions. The Court may, in case the authority fails to furnish proper explanation for the delay in conclusion of the enquiry, direct it to complete the enquiry within a stipulated period. However mere delay, in conclusion of the enquiry or the 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 and, ordinarily, the Court should not interfere with the order of suspension unless they are passed malafide, and without there being even prima facie evidence on record connecting the employee with the misconduct in question. (**Ashok Kumar Aggarwal**²; **Sanjiv Rajan**¹⁸; **Secretary to Government, Prohibition and Excise Deptt. v. L. Srinivasan**²³; **Allahabad Bank v. Deepak Kumar Bhola**²⁴ and **Buddana Venkata Murali Krishna**⁶).

26. On the question of the binding effect of the law declared by the two judge bench of the Supreme Court in **Ajay Kumar Choudhary**¹, 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, besides providing assurance to the individual as to the consequence of the transactions forming part of his daily affairs. (**Central Board of Dawoodi Bohra Community v. State of**

Maharashtra²⁵; Union of India v. Raghbir Singh (dead) by L.Rs²⁶). 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. A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of a larger quorum. **(Central Board of Dawoodi Bohra Community²⁵)**.

27. In **Khem Chand¹⁷**, the Constitution Bench of the Supreme Court held that 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. Gidroniya⁷**, 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.

28. In **R.P. Kapur⁹**, the Constitution Bench of the Supreme Court held 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.

29. While taking note of the fact that disciplinary proceedings may commence after completion of the criminal proceedings, the Constitution Bench, in **R.P. Kapur⁹**, was of the view that suspension during

investigation, enquiry or trial relating a criminal charge is intimately related to disciplinary matters. The fact that an order of suspension could continue during the trial of a criminal charge, and even thereafter till completion of disciplinary proceedings, if any, initiated against the Government servant was recognised in **R.P. Kapur**⁹ by the Constitution bench of the Supreme Court. None of the aforesaid Constitution bench judgments of the Supreme Court in **Khem Chand**¹⁷; **V.P. Gidroniya**⁷ and **R.P. Kapur**⁹ were noticed in the latter two bench judgment of the Supreme Court in **Ajay Kumar Choudhary**¹.

30. All subsequent decisions by benches comprised of lesser number of Judges should be read in the light of the earlier Constitution Bench decisions. (**N. Meera Rani v. Govt. of T.N**²⁷). In cases where a High Court finds any conflict between the views expressed by larger and smaller benches of the Supreme Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court, in such a case, is to try to find out and follow the opinion expressed by larger benches of the Supreme Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law, is followed by the Supreme Court itself. (**State of U.P. v. Ram Chandra Trivedi**²⁸; **Union of India v. K.S. Subramanian**²⁹). The legal position is that, in the hierarchical set up of Courts, the High Court is bound by the decisions of the Supreme Court. However, when a smaller bench of the Supreme Court lays down a proposition contrary to and without noticing the ratio decidendi of the earlier larger Benches, such a decision will not become the law declared by the Supreme Court so as to have a binding effect under Article 141 of the Constitution on all the Courts within the country. (**Sakinala Harinath v. State of A.P**³⁰). Judicial discipline requires that the opinion expressed by larger benches of the Supreme Court, in preference to those expressed by smaller benches of the Supreme Court, should be followed. (**K.S. Subramanian**²⁹; **O. Ramachandra Reddi v. The Director, DRDL, Hyderabad**³² and **Buddana Venkata Murali Krishna**⁶).

31. In **Ashok Kumar Aggarwal**², 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...." (emphasis supplied)

32. In **Sanjiv Rajan¹⁸**, the Supreme Court observed:

".....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.

In **L. Srinivasan²³**, 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 de hors 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....." (emphasis supplied)

33. In **Deepak Kumar Bhola²⁴**, the Supreme Court observed:--

".....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....."** (emphasis supplied)

34. The attention of the Supreme Court, in **Ajay Kumar Choudhary**¹, was not drawn to its earlier judgments in **Ashok Kumar Aggarwal**²; **Sanjiv Rajan**¹⁸; **L. Srinivasan**²³ and **Deepak Kumar Bhola**²⁴, wherein it was held that mere delay in conclusion of disciplinary proceedings or criminal cases or long period of suspension would not render the order of suspension invalid.

35. This Court may not, therefore, be justified in quashing the order of suspension following the judgment of the Supreme Court in **Ajay Kumar Choudhary**¹, as that would require it to ignore the Constitution bench judgments of the Supreme Court in **Khem Chand**¹⁷; **R.P. Kapur**⁹ and **V.P. Girdroniya**⁷, as also the other judgments of the Supreme Court in **Ashok Kumar Aggarwal**²; **Sanjiv Rajan**¹⁸; **L. Srinivasan**²³; and **Deepak Kumar Bhola**²⁴. The order under appeal does not, therefore, necessitate interference on this score.

36. We see no reason, therefore, to interference with the order of suspension impugned in the Writ Petition. The learned Single Judge has adequately safeguarded the appellant-writ petitioner's interest by fixing a time frame for a charge-sheet to be issued, and for the subsequent inquiry to be conducted. In an intra-court appeal, the scope for interference is extremely limited. Save in cases where the order under appeal suffers from a patent illegality, no interference is called for. We are satisfied that the

order under appeal does not suffer from any such infirmity. The Special Appeal fails and is, accordingly, dismissed. No costs.

(Alok Kumar Verma, J.)
18.06.2019

(Ramesh Ranganathan, CJ.)
18.06.2019

Sanjay/JKJ