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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS
&
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN
&
THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

Thursday, the 3rd day of August 2023 / 12th Sravana, 1945
WA NO. 934 OF 2022

AGAINST JUDGMENT DATED 08/06/2022 IN WP(C) 7268/2022 OF THIS COURT

APPELLANT/PETITIONER:

MATTANUR CO-OPERATIVE RURAL BANK LTD., HEAD OFFICE, MATTANUR P.O., KANNUR DISTRICT-670 702, REPRESENTED BY ITS SECRETARY.

BY SENIOR ADVOCATE SRI. GEORGE POONTHOTTAM AND

ADVS.M/S. NISHA GEORGE & A.L.NAVANEETH KRISHNAN

RESPONDENTS/RESPONDENTS:

1. **THE CO-OPERATIVE ARBITRATION COURT, KOZHIKODE-673 001.**
2. **T.V.BALAGOPALAN, S/O.NARAYANAN NAMBIAR, 'SOPANAM', MATTANUR P.O., PATTANUR, KANNUR DISTRICT-670 595.**

BY ADDITIONAL ADVOCATE GENERAL SRI.ASOK M.CHERIAN,

GOVERNMENT PLEADER SMT.SABEENA P.ISMAIL

SENIOR GOVERNMENT PLEADER SRI.SAIGI JACOB PALATTY AND

SPECIAL GOVERNMENT PLEADER [Co-operation] SRI. P.P.THAJUDEEN FOR R1

SRI. P.N.MOHANAN FOR R2

This Writ Appeal again coming on for orders along with connected cases on 03/08/2023 upon perusing the appeal memorandum and this court's order dated 08/06/2023, the court on the same day passed the following:

P.T.O.

EXT.P10:TRUE COPY OF THE ORDER DATED 15.09.2021 IN ARC NO.24/2016 ISSUED BY THE CO-OPERATIVE ARBITRATION COURT,KOZHOKODE.

(CR)

ALEXANDER THOMAS, J.,
C.JAYACHANDRAN, J. & SHOBA ANNAMMA EAPEN, J.

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W.A.No. 934 of 2022,
[arising out of (a/o) judgment dated 8.6.2022 in W.P.(C).No.7268/2022]
W.A.No. 975 of 2022,
[a/o judgment dated 8.6.2022 in W.P.(C).No.9927/2022]
W.A.No. 1022 of 2022,
[a/o judgment dated 18.7.2022 in W.P.(C).No.17719/2022]
W.A.No. 1041 of 2022,
[a/o judgment dated 8.6.2022 in W.P.(C).No.5373/2022]
W.A.No. 1047 of 2022,
[a/o judgment dated 27.7.2022 in W.P.(C).No.29403/2021]
W.A.No. 1243 of 2022,
[a/o judgment dated 27.7.2022 in W.P.(C).No.23134/2022]
W.A.No. 757 of 2023,
[a/o judgment dated 3.3.2023 in W.P.(C).No.1440/2023]
W.A.No. 965 of 2022,
[a/o judgment dated 8.6.2022 in W.P.(C).No.3639/2022]
W.A.No. 1043 of 2020,
[a/o judgment dated 14.7.2020 in W.P.(C).No.5627/2016]
W.A.No. 1045 of 2020,
[a/o judgment dated 14.7.2020 in W.P.(C).No.720/2016]
W.A.No. 938 of 2022,
[a/o judgment dated 8.6.2022 in W.P.(C).No.7252/2022]
W.A.No. 1305 of 2022,
[a/o judgment dated 25.7.2022 in W.P.(C).No.5747/2021]
W.A.No. 1308 of 2022,
[a/o judgment dated 25.07.2022 in W.P.(C).No.8330/2020]
&
W.A.No. 1503 of 2022
[a/o judgment dated 16.08.2022 in W.P.(C).No.24370/2022]

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Dated this the 3rd day of August, 2023

O R D E R

Alexander Thomas, J.

The aforecaptioned cases have been placed before this Full Bench on the basis of the order dated 12.4.2023 rendered by a Division Bench of this Court in those cases, whereby it has been held that the view taken by an earlier Division Bench in ***Kodanchery Service Co-operative Bank***

Ltd. v. Joshy Varghese [2020(4) KLT 129 (DB) = 2020 KHC 5394 = 2020 (3) KLJ 474], requires serious re-consideration and hence these cases have been referred to the Full Bench for an authoritative determination of the issues mentioned in the said reference order, in exercise of the powers under Sec. 7 of the Kerala High Court Act. In ***Kodanchery's case*** supra [2020(4) KLT 129 (DB)], rendered on 13.1.2020, the Division Bench has considered the provisions contained in Rule 198 of the Kerala Co-operative Societies (KCS) Rules, framed under the Kerala Co-operative Societies (KCS) Act, in the matter of disciplinary action affecting the employees of co-operative societies, more particularly sub rules (2A) and (2B) of Rule 198 and it has been held therein, more particularly in para No.5 thereof, that the said provisions, more particularly Rule (2B) does not empower the disciplinary sub committee mentioned therein to frame memo of charges against the delinquent employee and that the said power to frame memo of charges is exclusively vested with the appointing authority (viz., managing committee of the co-operative society). The referring Division Bench, in the afore reference order dated 12.4.2023, after considering the various sub rules of Rule 198 and case laws has held that Kodanchery's case supra [2020(4) KLT 129 (DB)] has rightly held that there is a distinction between the words, "*charges*" and "*charge sheet/ memo of charges*" and that the words appearing in Rule 198 (2B), after the words, "*inquire into*", are "*the*

charges" and not "*charge sheet/ memo of charges*" and that "*charges*" means alleged specific acts or omission said to have been committed by an employee, whereas "*charge sheet/ memo of charges*" is the memorandum of charges drawn up which delineates the specific allegations of acts or omission, which the delinquent will have to defend. Hence, the referring Division Bench has taken the view that the power conferred on the disciplinary sub committee, as per Rule 198(2B), is the power to "inquire into the charges" and that therefore, the said power would also include the power to take into account the various allegations against the delinquent and then draw up a specific memorandum of charges/memo of charges/ charge sheet against the delinquent, so that he is apprised, in clear terms, as to what are the specific allegations which he has to defend in the said inquiry process. It is on this premise that the referring bench has held that the decision in ***Kodanchery's case supra*** [2020(4) KLT 129 (DB)], taking the view that the disciplinary sub committee has no power even to issue memo of charges and that it can only conduct inquiry into the memo of charges issued by the appointing authority, etc., would require serious reconsideration. Hence, these matters have been referred to this Full Bench for determination.

2. The issue to be decided by the Full Bench is essentially a question of law. For the sake of factual clarity, the facts in one of the cases,

as referred to in para 2 of the reference order, would be pertinent.

3. The basic facts in W.A.No. 934/2022 are that the impugned order in the said writ proceedings is Ext.P-10 order therein, which was rendered by the Co-operative Arbitration Court. The said Arbitration Court, by placing reliance on the decision of the Division Bench in ***Kodanchery's case supra*** [2020(4) KLT 129 (DB)], has held that the impugned Ext.P-10 therein would stand interdicted, as the memorandum of charges was issued by the disciplinary sub committee, constituted under Rule 198(2A) and that, as held in ***Kodanchery's case supra*** [2020(4) KLT 129 (DB)], only the managing committee/appointing authority has the jurisdictional competence to issue charge sheet. The writ petition, challenging the verdict of the Arbitration Court, was dismissed. It is in this back ground that the aforesaid writ appeal has been instituted, which is one of the cases included in the reference order. The facts in the other cases need not be dealt with in detail. This is so, as we are of the opinion that, in the light of the fact scenarios involved in these cases, and in view of the provisions contained in Sec.7 of the Kerala High Court Act, we intend to answer the question of law referred for consideration and related issues, and then return the cases for final adjudication by the Division Bench concerned.

4. We have heard the learned Advocates concerned appearing for

the various co-operative societies' employers concerned in these cases, Advocates concerned who appeared for co-operative societies' employees concerned, Sri.Ashok M.Cherian, learned Addl. Advocate General, appearing for the respondent State assisted by Sri.P.P.Thajudeen, learned special Government Pleader (Co-operation) and Sri.Saigi Jacob Palatty, learned Senior Govt. Pleader.

5. Now, we would proceed to make a brief scan of the relevant provisions contained in the KCS Act and the KCS Rules, more particularly Rule 198 and then deal with various case laws on the general issue of competence of authorities to issue memo of charges to the delinquent employees and other allied case laws and then would proceed to answer the reference.

A brief overview of the relevant provisions of the KCS Act and the KCS Rules.

6. Sec.2(e) of the Act defines "committee" to mean "*the governing body of a co-operative society by whatever name called, to which the management of the affairs of the society is entrusted.*" There are no specific provisions in the KCS Act, which deals with scenario of disciplinary action affecting the employees of the co-operative society, except Sec. 80, which generally deals with establishment, consisting of the officials and employees of the co-operative societies concerned. Sec. 80 (3)

empowers the Government to make rules either prospectively or retrospectively, regulating the qualification, remuneration, allowances, etc. and other conditions of service of the officers and servants of the different classes of societies, etc. Sub section (9) of Sec. 80 stipulates that suspension and disciplinary action in relation to an officer, employee or servant of a co-operative society shall be such, as may be prescribed. Sub section (8) of Sec. 80 stipulates that Government shall, by order, frame uniform Service Rules and Conduct Rules for the employees of any or all classes of co-operative societies. The word, "prescribed" has been defined as per Sec. 2(o) of the Act to mean *"prescribed by rules made under the said Act."*. Sec. 109 deals with power to make rules. Clause (xxxviii) of sub section (2) of Sec. 109 *inter alia* stipulates that, in particular and without prejudice to the generality of the power under Sec. 109, the said rules may provide for, *"any other matter required or allowed by the said Act to be prescribed"*.

7. Chapter XV of the KCS Rules deals with Establishment. Rules 182 to 201 are included in Chapter XV. Rule 182(2) of the KCS Rules stipulates that the committee shall be the authority competent to appoint employees in the co-operative society. In other words, the committee, as defined in Sec. 2(e) of the KCS Act, as given supra, shall be the competent appointing authority of all employees in a co-operative society. Rule 198

thereof deals with disciplinary action. Amendment has been carried to Rule 198 inserting sub rules (2A) and (2B) and the sole proviso to sub rule (5) and also introducing sub rules (7) and (8) thereof, as per SRO No.1005/2010 published in Kerala Gazette dated 2.11.2010. Rule 198, prior to the said amendment made effective from 2.11.2010, consisted of six sub rules, viz, sub rules (1) to (6) thereof.

8. Rule 198, as it stood prior to the amendment effective from 2.11.2010 reads as follows:

> **"Rule 198. Disciplinary action.—** (1) Any member of the establishment of a co-operative Society may, for good and sufficient reasons, be punished by imposing any of the following penalties, namely:
>
> (a) Censure;
>
> (b) Fine (in the case of employees in the last grade);
>
> (c) Withholding of increments with or without cumulative effect.
>
> (d) Withholding of promotion;
>
> (e) Recovery from pay of the whole or part of any pecuniary loss caused to the society, by negligences or breach of orders or otherwise;
>
> (f) Reduction to a lower rank;
>
> (g) Compulsory retirement;
>
> (h) Dismissal from service.
>
> (2) No kind of punishment shall be awarded to an employee unless he has been informed in writing of the grounds on which it is proposed to take action against and he has been afforded an opportunity including a personal hearing to defend himself. Every order awarding punishment shall be communicated to the employee concerned in writing stating the grounds on which the punishment has been awarded:
>
> (3) The authority competent to impose the various penalties on different categories of employees shall be as shown in the table below:

	Authority competent to impose	
Rank of the employee	Penalties under (a) to (c)	Penalties under (d) to (h)
Secretary/Manager or other Chief Executive Officer and all employees holding posts higher than that of Sr. Clerk/ Sr. Assistant/ I Grade Assistant/ Equivalent other employees with same or identical scale of pay	President/Chairman	Sub-Committee/ Executive Committee
All other employees	Secretary/Manager or other Chief Executive Officer.	President

(4) An appeal shall lie against every order imposing a penalty to the competent appellate authority, shown in the table below:-

Secretary/Manager or other Chief Executive Officer and all employees holding posts higher than that of Sr. Clerk/ Sr. Assistant/ I Grade Assistant/ Equivalent other employees with same or identical scale of pay	Executive Committee or Board of Management	Board of Management
All other employees	President	Executive Committee/ Board of Management

(5) No appeal shall be entertained if it is not preferred within a period of three months from the date of the order imposing the penalty.

(6) An authority competent to appoint an employee may suspend him pending enquiry into serious charges against such employee. No employee shall however be kept under suspension for a period exceeding six months at a time. In no case an employee shall be kept under suspension for a continuous period exceeding one year without the prior approval of the Registrar. An employee under suspension shall be entitled to subsistence allowance payable under the Kerala Payment of Subsistence Allowance Act, 1972 (27 of 1973).

Provided that an employee not coming under the purview of the Kerala Payment of Subsistence Allowance Act, 1972 (27 of 1973) shall be entitled to subsistence allowance at the rate admissible to State Government Employees as prescribed under the Kerala Service Rules."

9. It appears that in very many cases, the managing committee of the society as the appointing authority used to not only initiate and commence disciplinary action, but also finalise the same by imposition of penalty, including dismissal, compulsory retirement, etc. This was challenged mainly on the ground that the managing committee is also the appellate authority, in terms of Rule 198(4) and therefore, if the managing committee also imposes the penalty in question, then the precious statutory and vested right to institute appeal to impugn the penalty order will be completely obliterated, etc. A Division Bench of this Court in the case ***President, Pudupariyaram Service Co-operative Society*** *v.* ***Rukmini Amma & Ors. [1996 (1) KLT 100]*** (rendered on 14.11.1995)

has held, in para 9 thereof, that as per sub rule (3) of Rule 198, the authority competent to impose various penalties on different categories of employees shall be as shown in the table provided therein. That, if the employee is the Secretary and the penalty proposed is either compulsory retirement or dismissal from service, the table shows that the authority competent to impose the penalty is "the sub committee or executive committee". Sub rule (4) provides an appeal against the decision of the sub committee to the executive committee/Board of management.

10. In para 10 thereof, it was held that if the first decision is taken by the Board of management for imposing major penalty, like dismissal or compulsory retirement from service, the statutory appellate provision, mandated in terms of Rule 198(4), becomes otiose and if a sub-committee, as envisaged in sub rule (3), is not formed to take a decision, the resultant position is negation of the appeal provision prescribed in the Rules. It was held that a right of appeal is a valuable right and when a statute has provided such a right, it should not be scuttled or frustrated by not forming such a sub-committee, as envisaged in sub rule (3). It was, *inter alia,* held that the advantages of an appeal provision are that the aggrieved party can focus on the points missed by the original authority taking the decision and the delinquent would be in a better position to project different angles and a reappraisal of materials for reaching different findings can be made by

the appellate body and normally, the appellate authority has co-extensive power with the original authority to reach conclusions. Thus, it can be seen that the Division Bench, in ***Pudupariyaram's case*** *supra [1996 (1) KLT 100]*, has categorically held that the managing committee/ Board of management, etc., though is the appointing authority, cannot adorn the role of disciplinary authority in the matter of imposing penalties as above and that the penalties in question should be imposed by the sub committee/designated authority as per Rule 198(3) and the decision of the original disciplinary authority could be challenged by the delinquent by filing appeal under Rule 198(4) before the managing committee/ board of management, etc.

11. The Division Bench has also, *inter alia,* held in para 13, etc. that failure of the co-operative society concerned to constitute a sub committee, as envisaged in Rule 198(3), to take decisions, as the disciplinary authority to impose penalties, is contrary to the provisions of the Rules. There are certain other issues dealt with in ***Pudupariyaram's case*** *supra*, on which there has been some divergence of opinion and we need not get into those matters, as they are not relevant and necessary for our present purposes.

12. We have been apprised by Sri. Asok M.Cherian, learned Addl. Advocate General appearing for the respondent State and departmental

authorities, that it is to effectuate and clarify the abovesaid legal position, declared by the Division Bench of this Court in ***Puduparyiaram's case*** *supra [1996 (1) KLT 100]*, that the rule making authority has made specific amendments to Rule 198, that is the provisions contained in sub rules (2A) and (2B) thereof. Rule 198, as it stands after the amendment made effective from 2.11.2010, reads as follows:

> **"Rule 198. Disciplinary action.—** (1) Any member of the establishment of a co-operative Society may, for good and sufficient reasons, be punished by imposing any of the following penalties, namely:
>
> (a) Censure;
>
> (b) Fine (in the case of employees in the last grade);
>
> (c) Withholding of increments with or without cumulative effect.
>
> (d) Withholding of promotion;
>
> (e) Recovery from pay of the whole or part of any pecuniary loss caused to the society, by negligences or breach of orders or otherwise;
>
> (f) Reduction to a lower rank;
>
> (g) Compulsory retirement;
>
> (h) Dismissal from service.
>
> (2) No kind of punishment shall be awarded to an employee unless he has been informed in writing of the grounds on which it is proposed to take action against and he has been afforded an opportunity including a personal hearing to defend himself. Every order awarding punishment shall be communicated to the employee concerned in writing stating the grounds on which the punishment has been awarded:
>
> (2A) The committee of a society shall constitute a disciplinary sub-committee consisting of not more than three of its members, of whom one shall be designated as Chairman, but the President of the committee of the society shall not be a member in the disciplinary sub-committee.
>
> (2B) The disciplinary sub-committee so constituted shall inquire into the charges against the employee either by themselves or by engaging an external agency.
>
> (3) The authority competent to impose the various penalties on different categories of employees shall be as shown in the table below:

	Authority competent to impose	
Rank of the employee	Penalties under (a) to (c)	Penalties under (d) to (h)
Secretary/Manager or other Chief Executive Officer and all employees holding posts higher than that of Sr. Clerk/ Sr. Assistant/ I Grade Assistant/ Equivalent other employees with same or identical scale of pay	President/Chairman	Sub-Committee/ Executive Committee
All other employees	Secretary/Manager or other Chief Executive Officer.	President

(4) An appeal shall lie against every order imposing a penalty to the competent appellate authority, shown in the table below:-

Secretary/Manager or other Chief Executive Officer and all employees holding posts higher than that of Sr. Clerk/ Sr. Assistant/ I Grade Assistant/ Equivalent other employees with same or identical scale of pay	Executive Committee or Board of Management	Board of Management
All other employees	President	Executive Committee/ Board of Management

(5) No appeal shall be entertained if it is not preferred within a period of three months from the date of the order imposing the penalty.

Provided that where the penalties are imposed on employee by an administrator or an administrative committee, such employees can file appeal before the forthcoming elected committee and in such cases the restriction of three months shall not be applicable.

(6) An authority competent to appoint an employee may suspend him pending enquiry into serious charges against such employee. No employee shall however be kept under suspension for a period exceeding six months at a time. In no case an employee shall be kept under suspension for a continuous period exceeding one year without the prior approval of the Registrar. An employee under suspension shall be entitled to subsistence allowance payable under the Kerala Payment of Subsistence Allowance Act, 1972 (27 of 1973).

Provided that an employee not coming under the purview of the Kerala Payment of Subsistence Allowance Act, 1972 (27 of 1973) shall be entitled to subsistence allowance at the rate admissible to State Government Employees as prescribed under the Kerala Service Rules.

(7) In the event of any pendancy of disciplinary proceedings against any employee of a co-operative society or any co-operative institution pursuant to any charge of grave misconduct, irregularity, corruption or other charge involving moral turpitude, no retirement benefits shall be sanctioned to such employee or retired employee and in case of sanctioning of any retirement benefits to any such employee or retired employee, the name and designation of the sanctioning authority together with the reason for such sanctioning shall be recorded by the sanctioning authority by himself and such authority shall be held responsible for any loss to the society owing to such sanctioning of retirement benefits if found that such sanctioning was unwarranted.

(8) In respect of all employees save the Chief Executive Officer of a society, no retirement benefits shall be sanctioned and disbursed until after the due issuance of a non-liability certificate by the Chief Executive Officer and approval of the same by the committee of the society within thirty days from the date of retirement of such employee. In the event of the retirement of the Chief Executive Officer, the non-liability certificate shall be issued by the committee of the Society. For any loss to the society due to the non-adherence of the forgoing procedure, the Chief Executive Officer along with the committee of the society shall be held responsible collectively and severally in respect of the issuance of Non-liability Certificate to any employee other than the Chief Executive Officer and the members of the committee shall be held collectively and severally responsible for the issuance of Non-liability Certificate to the Chief Executive Officer."

13. It can be seen that, in the light of the legal position settled by

the Division Bench of this Court in ***Pudupariyaram's case supra*** *[1996 (1) KLT 100]*, the managing committee/ board of management, which is the appointing authority as envisaged in Rule 198(2), and is also the appellate authority, in terms of Rule 198(4), as far as delinquents have to suffer penalties concerned mentioned in Rule 198(3), then going by the scheme and structure of the KCS Rules, the appointing authority (managing committee) is prohibited from adorning the role of disciplinary authority, which is to impose penalties. This is so, as the managing committee/ appointing authority has to mainly fulfill its obligations, as the appellate authority, in terms of Rule 198(4) and therefore, the managing authority/ appointing authority is prohibited from imposing the requisite penalties. In other words, going by the scheme and structure of the KCS Rules, the power to impose the penalties concerned are exclusively conferred on the disciplinary sub committee in the case of employees of higher level, covered by the first item of the table appended to Rule 198(3) and the President of the co-operative society is the competent disciplinary authority to impose requisite major penalties in the case of lower level employees, as mentioned in the said table. Major penalties are covered by clauses (d) to (h) of sub rule (1) [Clauses (d) to (h) of Rule 198(1) are penalties of withholding of promotion, recovery from pay, reduction to a lower rank and compulsory retirement and dismissal from service]. So

also, the exclusive authority to impose such penalties as per Clauses (d) to (h) of Rule 198(1) in the case of other employees mentioned in the table is the President of the society concerned. So, at the outset, it has to be borne in mind that the scheme and structure of Rule 198, in the matter of the competence of the appointing authority to impose penalties, is substantially different from the scheme envisaged in Art.311 and Government service rules applicable to Government employees. In Rule 198, applicable to co-operative society employees, the appointing authority is prohibited from exercising the powers to impose the aforesaid penalties, as, otherwise, the precious statutory and vested right of the aggrieved employee, to avail the appellate remedy, would be obliterated. Whereas, under Art.311 of the Constitution of India, applicable to employees in civil capacities under the Union or a State, it is mandated, as per clause (1) thereof, that no such person shall be dismissed or removed by an authority subordinate to that by which he was appointed.

Various relevant case laws:

(i) ***Surath Chandra Chakrabarty v. State of W.B.*** ("***Surath Chandra Chakrabarty's case***" for short) [(1970) 3 SCC 548]

14. The main plea taken up by the delinquent employee in the above case is that the memorandum of charges was very vague and no material particulars and other necessary details, giving proper clarity to the

memo of charges, were mentioned in the memo of charges / charge sheet and hence, it was contended that such a charge sheet, issued in the said disciplinary proceedings, would result in non compliance of the requirements under the then Rule 55 of the then Civil Services (Classification, Control and Appeal) Rules.

15. The aforesaid Rule 55, as given in para 5 of the aforesaid judgment, provided, *inter alia,* that "*without prejudice to the provisions of the Public Servants Enquiry Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of service unless he is informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated."* Construing this provision, the 3-Judge Bench of the Apex Court in the afore ***Surath Chandra Chakrabarty's case supra*** *[(1970) 3 SCC 548],* has held, in para 5 thereof, that the afore said rule embodies a principle, which is one of the basic contents of a reasonable or adequate

opportunity for defending oneself and if a delinquent is not told clearly and definitely, what the allegations are, on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him. By analysing the facts disclosed in the impugned charges therein, the Apex Court held, in para No.6 thereof, that in that facts of that case, each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. That, it is precisely for this reason, that the aforesaid Rule 55 provides that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. At every stage, the appellant had brought it to the notice of the authorities concerned that he had not been supplied the statement of allegations and that the charges were extremely vague and indefinite. That, in spite of all this, no one cared to inform him of the facts, circumstances and particulars relevant to the charges. So, it was held that the entire proceedings were in complete disregard of the aforesaid Rule 55, insofar as it lays down, in almost mandatory terms, that the charges must be accompanied by a statement of allegations. Hence,

Their Lordships of the Supreme Court held that they have no manner of doubt that the appellant therein was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations, containing the material facts and particulars, not having been supplied to him. Accordingly, the Apex Court, in para No.8 thereof, allowed the appeal and set aside the impugned judgment.

(ii) ***State of M.P. & Ors. v. Shardul Singh*** (*"**Shardul Singh's case***" for short) [(1970) 1 SCC 108]

16. Herein, the Apex Court dealt with the correctness of the impugned judgment therein, rendered by the Madhya Pradesh High Court, wherein it was held that the power of dismissal and removal, referred to in Art.311(1) of the Constitution, implies that the authorities mentioned in that Article must alone initiate and conduct the disciplinary proceeding culminating in the dismissal or removal of the delinquent officer. The delinquent therein was an officer of the rank of Sub Inspector of Police. Therein, the appointing authority of the employee concerned, as Sub Inspector of Police, was the Inspector General of Police. Regulation 228, framed under the Central Provinces and Bihar Police Regulations, framed on the basis of the Government of India Act, 1935, envisages that *"in every case of dismissal, reduction in rank, grade or pay, or withholding of*

increment, etc. for a period in excess of one year, a formal proceeding must be recorded, by the District Superintendent in the prescribed form, setting forth: (a) the charge; (b) the evidence on which the charge is based; (c) the defence of the accused; (d) the statements of his witnesses (if any) (e) the finding of the District Superintendent, with the reasons on which it is based; and (f) the District Superintendent's final order or recommendation, as the case may be." However, Regulation 229 prescribed that, in cases where the District Superintendent is not empowered to pass a final order, he should forward his proposals for the dismissal, removal or compulsory retirement of an officer of, and above the rank of Sub-Inspector, to the proper authority, etc. In that case, though the Inspector General of Police, was the appointing authority of the delinquent, the above proceedings were conducted by the Superintendent of Police, in view of Rule 228 and in terms of Rule 229 and the matter was forwarded by the Superintendent of Police to the Inspector General who was the appointing authority. After securing the explanation of the delinquent, the Inspector General of Police issued the order, dismissing him from service. The delinquent's appeal to the Government against the order of dismissal was also rejected. Before the High Court, the dismissal order was challenged mainly on the ground that the Superintendent was not competent to initiate or conduct inquiry held against the delinquent, as he

had been appointed by the Inspector General of Police and that the disciplinary proceedings, conducted in terms of Regulation 228, was against the mandate of Art.311 (1).

17. On a reading of para No.5 thereof, the main question that arose for consideration was whether the power conferred on the Superintendent of Police, under Regulations 228 & 229 is *ultra vires* Art.311(1).

18. Article 311(1) provides that no person, who is a member of Civil Service of the Union or of an All-India Service or Civil Service of a State or who holds civil post under the Union or State, shall be dismissed or removed by an authority subordinate to that by which he was appointed. It was held therein that Article 311 does not in terms require that the authority empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding, the dismissal or removal of the officer or even that enquiry should be done at its instance. That the only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed. It was contended by the delinquent that the guarantee under Art.311(1) also includes within itself the guarantee that the relevant disciplinary inquiry should be initiated and conducted by the authorities mentioned in the Article. The said plea was accepted by the

High Court. The Apex Court held, in para No.10 thereof, that, but for the incorporation of Article 311 in the Constitution, even in respect of matters provided therein, rules could have been framed under Article 309. It was held that the provisions in Article 311 confer additional rights on the civil servants and their Lordships of the Apex Court are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings, resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article. Accordingly, the Apex Court set aside the impugned judgment of the High Court and the Writ Petition was dismissed. Paras 6 and 10 of the decision in ***Shardul Singh's case*** **supra** [(1970) 1 SCC 108, p.p.110 & 112] read as follows:

> ***"6.*** *Article 311(1) provides that no person who is a member of Civil Service of the Union or of an All-India Service or Civil Service of a State or holds civil post under the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed. This Article does not in terms require that the authority empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that that enquiry should be done at its instance. The only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed. But it is said on behalf of the respondent that that guarantee includes within itself the guarantee that the relevant disciplinary inquiry should be initiated and conducted by the authorities mentioned in the Article. The High Court has accepted this contention. We have now to see whether the view taken by the High Court is correct.*
>
> *xxx xxx xxx*
>
> *10. But for the incorporation of Article 311 in the Constitution even in respect of matters provided therein, rules could have been framed under Article 309. The provisions in Article 311 confer additional rights on*

> *the civil servants. Hence we are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article."*

(iii) ***P.V. Srinivasa Sastry & Ors. v. Comptroller & Auditor General & Ors.*** ("***P.V. Srinivasa Sastry's case***" for short) [(1993) 1 SCC 419]

19. The main plea put up in the above case by the delinquent was that the disciplinary proceedings as well as the final order of penalty were vitiated, as the disciplinary proceedings have been initiated in that case by the Senior Deputy Accountant General instead of the Accountant General, who was the appointing authority concerned. Hence, it was urged that the impugned action is violative of Art.311. As can be seen from para 4 thereof, the main issue decided therein was whether the guarantee in Art.311(1), that no person coming within its ambit shall be dismissed or removed by an authority subordinate to that by which he was appointed, would also include the guarantee that even the disciplinary proceeding should be initiated only by the appointing authority. It was held therein that Art. 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority and that it is open to the Union Government or the State Government to make any rule, prescribing that even the proceedings against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Such a rule will amount

to providing an additional safeguard or protection to the holder of a civil post. But that, in the absence of any such rule, such a right or guarantee, that even disciplinary proceedings can be only by the appointing authority, does not flow from Article 311. Crucially, it has been held therein that initiation of a departmental proceeding, *per se,* does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. It was also held, in para 4 thereof, that, at the same time, this will not give right to authorities, having the same rank as that of the officer against whom proceeding is to be initiated, to take a decision whether any such proceeding should be initiated and in absence of a rule, any superior authority, viz., an authority superior to the delinquent, who can be held to be the controlling authority, can initiate such proceeding. In para No.5, ***P.V.Srinivasa Sastry's case supra*** *[(1993) 1 SCC 419]*, the Apex Court has referred to the afore cited ***Shardul Singh's case supra*** *[(1970) 1 SCC 108]*, wherein it was held that the Apex Court cannot agree with the finding of the High Court therein that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings, resulting in dismissal or removal of a civil servant, should also be initiated and conducted by the authorities mentioned in that Article. In

the latter part of para 6 of the decision in ***P.V.Srinivasa Sastry's case supra*** *[(1993) 1 SCC 419],* the Apex Court has held that Article 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings but that the same be provided and prescribed by the rules. But if no rules have been framed, saying as to who shall initiate the departmental proceedings, then, on the basis of Article 311 of the Constitution, it cannot be urged that it is only the appointing authority and no officer subordinate to such authority can initiate the departmental proceeding. It was further observed that it was not brought to the notice of the Apex Court that any rule prescribes that the Accountant General, who is the appointing authority, alone could have initiated a departmental proceeding. It will be pertinent to refer to paras 5 and 6 of ***P.V.Srinivasa Sastry's case supra*** *[(1993) 1 SCC 419, pp.422-423]*, which read as follows:

> **"5.** In the case of *State of M.P.* v. *Shardul Singh* [(1970) 1 SCC 108] the departmental enquiry had been initiated against the Sub-Inspector of Police by the Superintendent of Police, who sent his enquiry report to the Inspector-General, who was the appointing authority. The Inspector-General of Police dismissed the officer concerned from the service of the State Government. That order was challenged on the ground that the initiation of the departmental enquiry by the Superintendent of Police was against the mandate of Article 311(1) of the Constitution. This contention was accepted by the High Court. But this Court said: (SCC p. 112, para 10)
>
> > "… we are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article."

> **6.**.....
>
> Although Article 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings but, as already stated above, that can be provided and prescribed by the rules. But if no rules have been framed, saying as to who shall initiate the departmental proceedings, then on the basis of Article 311 of the Constitution it cannot be urged that it is only the appointing authority and no officer subordinate to such authority can initiate the departmental proceeding. In the present case, it was not brought to our notice that any rule prescribes that the Accountant General, who is the appointing authority, alone could have initiated a departmental proceeding."

(iv) ***Transport Commr., Madras-5 v. A. Radha Krishna Moorthy***, (1995) 1 SCC 332 ["***Radha Krishna Moorthy's case***" for short].

20. One of the main pleas raised in this case, as can be seen from a reading of para 5(2) thereof is that the disciplinary proceedings are liable for interdiction, as it has been initiated by an authority lower than the appointing authority of the delinquent employee and that hence, an incompetent authority has initiated the disciplinary proceedings. In para No.8 thereof, the Apex Court held that, insofar as the plea as regards the initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled that it is unobjectionable and that initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly, it was held by the Apex Court that the same was not a permissible ground for quashing of charges.

(v) ***Inspector General of Police & Anr. v. Thavasiappan***, (1996) 2 SCC 145 ["***Thavasiappan's case***" for short]

21. A reading of para 2 of the above case would indicate that the delinquent employee was an official of the rank of Sub Inspector of Police. The Deputy Superintendent of Police was competent to award penalty of compulsory retirement involved in that case. An officer of the rank of Deputy Superintendent of Police was appointed as the enquiry officer, who framed the charges and served the same to the delinquent. The Deputy Superintendent of Police conducted the enquiry and submitted report to the Deputy Inspector General of Police (DIG), who was competent to award the penalty of compulsory retirement. DIG of Police agreed with the findings recorded by the enquiry officer and imposed the penalty of compulsory retirement. The appeal against the same was also dismissed by the Inspector General of Police. A reading of para 9 thereof would indicate that, in the facts of that case, Rules were silent, as to who shall initiate and conduct a disciplinary proceedings. Though Rule 2-A provided that the Governor or any other authority empowered by him may institute disciplinary proceedings, the same was held to be an enabling provision and it was held that, from the wordings of the Rule, it is not possible to infer that the rule-making authority intended to take away the power of otherwise competent authorities, like the appointing authority, disciplinary

authority or controlling authority and confine it only to the authorities mentioned in Rule 2-A thereof. Further that, the Rule was completely silent as regards the person who should conduct the various proceedings mentioned in Rule 3(*b*)(*i*), except that the report of the enquiry has to be prepared by the authority holding the enquiry. It was held in para No.9 thereof that, if it was intended by the rule-making authority that the disciplinary authority should itself frame the memo of charges and hold the enquiry, then, it would not have provided that a report of the enquiry shall be prepared by the authority holding the enquiry, whether or not such authority is competent to impose the penalty. The Apex Court therein has placed reliance on the afore cited decisions in ***Shardul Singh's case supra*** *[(1970) 1 SCC 108],* ***P.V.Srinivasa Sastry's case supra*** *[(1993) 1 SCC 419] and* ***Radha Krishna Moorthy's case supra,*** *(1995) 1 SCC 332*. The Apex Court, in para 8 of the decision in ***Radha Krishna Moorthy's case supra*** *[(1995) 1 SCC 332],* has held that initiation of disciplinary enquiry can be by an officer subordinate to the appointing authority. Hence, it was held, in para 8 of the decision in ***Thavasiappan's case supra*** *[(1996) 2 SCC 145]* that the aforecited decisions fully support the position that initiation of a departmental proceeding and conducting an enquiry can be by an authority other than the authority competent to impose the proposed penalty. It was thus held

in the latter part of para No.9 of ***Thavasiappan's case supra*** *[(1996) 2 SCC 145],* that, generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. It was held by the Apex Court that the view taken by the Tribunal, that in a case falling under Rule 3(*b*) therein, the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority, then only that penalty can be imposed which that lower authority is competent to award, etc. is clearly erroneous. The appeal was allowed and the impugned decision of the Tribunal was set aside and the case was remitted back to the Tribunal, etc. Para 8 and the latter part of Para 9 of ***Thavasiappan's case supra*** *[(1996) 2 SCC 145]* read as follows:

> **"8.** The learned counsel also drew our attention to *P.V. Srinivasa Sastry*v.*Comptroller and Auditor General* [(1993) 1 SCC 419 : 1993 SCC (L&S) 206 : (1993) 23 ATC 645] wherein this Court in the context of Article 311(1) has held that in absence of a rule any superior authority who can be held to be the controlling authority can initiate a departmental proceeding and that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences. *Transport Commr.* v. *A. Radha Krishna Moorthy* [(1995) 1 SCC 332 : 1995 SCC (L&S) 313 : (1995) 29 ATC 113] was next relied upon. Therein also this Court has held that initiation of disciplinary enquiry can be by an officer subordinate to the appointing authority. These decisions fully support the contention of the learned counsel for the appellants that initiation of a departmental proceeding and conducting an enquiry can be by an authority other than the authority competent to impose the proposed penalty.
>
> 9. .... Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find

> anything in the rules which would induce us to read in Rule 3(*b*)(*i*) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling under Rule 3(*b*) the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority then only that penalty can be imposed which that lower authority is competent to award, is clearly erroneous. ....."

(vi) ***Commissioner of Police v. Jayasurian & Anr.*** [(1997) 6 SCC 75] [**"*Jayasurian's case*"** for short]

22. As can be seen from para 5 of the abovesaid decision, the Tribunal therein has set aside the order of removal passed by the Commissioner of Police. The main grounds on which the Tribunal has set aside the order of removal, imposed on the Police Constable by the Commissioner of Police, was that the latter was not the appointing authority of the former. As regards that, the Apex Court has held, in para No.7 thereof, that, in view of the previous decisions, in cases as in ***Thavasiappan's case*** supra [(1996) 2 SCC 145], any superior authority, viz., authority superior to the delinquent, who can be said to be the controlling authority, can initiate departmenal proceedings and issue the charge memo and initiation of departmental proceedings and conducting an inquiry can be by an authority other than the authority competent to impose the proposed penalty.

(vii) ***Registrar of Co-op. Societies, Madras & Anr. v. F.X. Fernando*** [(1994) 2 SCC 746] ["***Fernando's case"*** *for short*]

23. The above decision was rendered by a three-Judge Bench of

the Apex Court. The respondent delinquent employee therein had joined the co-operative department as Deputy Registrar and was later promoted as the Joint Registrar. During his tenure as Joint Registrar/Special Officer, complaints were received by the Director of Vigilance & Anti Corruption Department and the said Department was requested to complete the inquiry. On examination of the detailed report by the Vigilance and Anti Corruption Department, the Government issued an order directing the Registrar to take disciplinary proceedings against the respondent, whereupon the Registrar issued the charge memo. The Registrar (Marketing, Planning & Development), was appointed as the Enquiry Officer and the Registrar who called upon the respondent to appear before the Enquiry Officer, which order was challenged by the delinquent before the Tamil Nadu Administrative Tribunal. The Tribunal held that the impugned proceedings, under Rule 17(b), were liable to be set aside, on the ground that the Registrar of Co-operative Societies was not empowered to impose even minor penalty, but that it was open to the Government, as the Disciplinary Authority, to initiate fresh action, by issuing a charge memo and conclude the proceedings within a period of six months. Aggrieved thereby, the Department preferred civil appeal before the Apex Court. The Apex Court specifically held that the Registrar had not taken disciplinary action on his own volition and it was done only on the basis of the

directions issued by the Government by a GO, where it was directed to do so. Moreover, the Apex Court also held that the finding of the Tribunal is wrong, since it had not noted the amendment to Rule 12 of the Tamil Nadu Civil Service (CCA) Rules, whereunder even heads of the Department were enabled to impose penalty. The Three-Judge Bench of the Apex Court, in ***Fernando's case supra*** [(1994) 2 SCC 746], more particularly in para No.16, has placed reliance on paras 4, 5 and 6 of the 2 Judge's Bench decision in ***P.V.Srinivasa Sastry's case supra*** *[(1993) 1 SCC 419]*. Thus, it can be seen that the three-Judge Bench of the Apex Court in ***Fernando's case supra*** (1994) 2 SCC 746, has also confirmed the legal position that Art.311(1) does not mandate that even departmental proceedings must be initiated only by the appointing authority. But that, those aspects can be regulated by rules and if such special provisions are made by the rules, then it will amount to providing additional safeguards over and above Art.311. But, in the absence of any such rule, such a right does not flow from Art.311. Further that, initiation of a departmental proceeding *per se* does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. This will not give right to authorities having the same rank, as that of the officer against whom

proceeding is to be initiated, to take a decision whether any such proceeding should be initiated. That, in the absence of a rule, any superior authority, viz., authority superior to delinquent, who can be held to be the controlling authority, can initiate such proceeding.

(viii) ***State of U.P. & Anr. v. Chandrapal Singh*** [(2003) 4 SCC 670] [**"*Chandrapal Singh's case***" for short]

24. A reading of para 4 of the above decision would indicate that the Apex Court has dealt with the case, wherein, as per the then prevailing Government orders, the District Agriculture Officer was competent to initiate disciplinary proceedings, as an appointing authority. The delinquent, who was actually appointed to the post by the Director of Agriculture, was imposed with the order of dismissal by the said Director. Before the Tribunal, the delinquent contended that the District Agriculture Officer was lower in rank than the appointing authority, viz., Director of Agriculture and therefore, the District Officer could not have initiated disciplinary proceedings, nor could he have taken action on the disciplinary proceedings so initiated, due to incompetency. The Tribunal and the High Court allowed the said plea. The State challenged the same before the Apex Court. Before the Apex Court, the delinquent urged that since, as per the then norms, the District Agriculture Officer was the appointing authority at the time of his appointment, the Director of

Agriculture could not have appointed him and that, therefore, the impugned action of the Director was incompetent. The Apex Court overruled this objection and held that the said plea ignores the basic fact that, if this order of appointment was incompetent, the very appointment of the delinquent would go away. On the issues decided by the Tribunal and the High Court, the Apex Court held that the order of dismissal, passed by the Director of Agriculture, was intra vires Art.311. The plea of the delinquent, that the District Agriculture Officer was incompetent to initaite the disciplinary proceedings, was repelled by the Apex Court by placing reliance on the aforesaid decisions in ***Shardul Singh's case supra*** *[(1970) 1 SCC 108],* ***P.V.Srinivasa Sastry's case supra*** *[(1993) 1 SCC 419],* ***Fernando's case supra*** *[(1994) 2 SCC 746],* etc., as can be seen from a reading of paras 5, 6 and 7 of ***Chandrapal Singh's case supra*** *[(2003) 4 SCC 670].* In para 7 of ***Chandrapal Singh's case supra*** *[(2003) 4 SCC 670],* the Apex Court has placed reliance on paras 16 of ***Fernando's case supra*** *[(1994) 2 SCC 746]* as well as paras 4, 5 and 6 of ***P.V.Srinivasa Sastry's case supra*** *[(1993) 1 SCC 419].* Accordingly, the Apex Court held, in para 8 of the decision in ***Chandrapal Singh's case supra*** *[(2003) 4 SCC 670],* that, going by the terms and content of Article 311(1) of the Constitution, it does not follow that even initiation or conduct of inquiry proceedings should be by

that authority itself, which is empowered to dismiss or remove an official under the said article, unless there is an express rule governing the official requiring it to be so. Para 8 of ***Chandrapal Singh's case supra*** *[(2003) 4 SCC 670]* reads as follows:

> **"8.** Thus, looking to the terms and content of Article 311(1) of the Constitution, it does not follow that even initiation or conduct of inquiry proceedings should be by that authority itself, which is empowered to dismiss or remove an official under the said article, unless there is an express rule governing the official requiring it to be so."

(ix) ***Secretary, Ministry of Defence & Ors. v. Prabhash Chandra Mirdha*** [(2012) 11 SCC 565] ["***Prabhash Chandra Mirdha's case***" for short]

25. A reading of para 2 of the above decision would indicate that the Tribunal mainly interfered on the ground that the memo of charges had been issued to the respondent therein by an authority not competent to do so, being subordinate to his appointing authority. The Apex Court has held, in para 4 thereof, that the legal proposition has been laid down by this Court while interpreting the provisions of Article 311, that the removal and dismissal of a delinquent on misconduct must be by the authority not below the appointing authority. However, it does not mean that disciplinary proceedings may not be initiated against the delinquent by the authority lower than the appointing authority. In para 5 thereof it was observed that it was permissible for an authority, higher than the appointing authority to initiate the proceedings and impose punishment, in

case the said authority is not the appellate authority so that the delinquent may not lose the right of appeal. In other case, the delinquent has to prove as to what prejudice has been caused to him. Paras 4 and 5 of the decision in ***Prabhash Chandra Mirdha's case supra*** *[(2012) 11 SCC 565, p.570]* read as follows:

> *"**4.** The legal proposition has been laid down by this Court while interpreting the provisions of Article 311 of the Constitution of India that the removal and dismissal of a delinquent on misconduct must be by the authority not below the appointing authority. However, it does not mean that disciplinary proceedings may not be initiated against the delinquent by the authority lower than the appointing authority.*
>
> ***5.** It is permissible for an authority, higher than the appointing authority to initiate the proceedings and impose punishment, in case he is not the appellate authority so that the delinquent may not lose the right of appeal. In other case, the delinquent has to prove as to what prejudice has been caused to him.* (Vide *Sampuran Singh* v. *State of Punjab* [(1982) 3 SCC 200 : 1983 SCC (L&S) 1 : 1982 SCC (Cri) 686 : AIR 1982 SC 1407] , *Surjit Ghosh* v. *United Commercial Bank* [(1995) 2 SCC 474 : 1995 SCC (L&S) 529 : (1995) 29 ATC 373] , *Balbir Chand* v. *Food Corporation of India Ltd.* [(1997) 3 SCC 371 : 1997 SCC (L&S) 808 : AIR 1997 SC 2229] and *A. Sudhakar* v. *Postmaster General* [(2006) 4 SCC 348 : 2006 SCC (L&S) 817] .)"

26. Further, the Apex Court, in paras 6 and 7 of ***Prabhash Chandra Mirdha's case supra*** *[(2012) 11 SCC 565],* has placed reliance on the afore cited ***Thavasiappan's case supra*** *[(1996) 2 SCC 145],* ***Chandrapal Singh's case supra*** *[(2003) 4 SCC 670], and* ***A. Radha Krishna Moorthy's case supra,*** *[(1995) 1 SCC 332]*, wherein it was held that the initiation of inquiry proceedings, by an officer subordinate to the appointing authority, is unobjectionable and the initiation can be by an officer subordinate to the appointing authority, but that only the dismissal and removal shall not be by an authority

subordinate to the appointing authority, in view of Article 311, etc. Further, it has been held, in para No.8 of ***Prabhash Chandra Mirdha's case supra*** *[(2012) 11 SCC 565],* that the law does not permit quashment of charge sheet or memo of charges in a routine manner and in case the delinquent employee has any grievance, in respect of the charge-sheet, he must raise the issue by filing a representation and await the decision of the disciplinary authority thereon, etc. Further that, interference on the ground of delay, etc. should be considered by the court after assessing the gravity of the charge and all relevant factors involved in the case, weighing all the facts, both for and against the delinquent employee and must reach the conclusion, which is just and proper, in the circumstance.

(x) ***Steel Authority of India, Successor of Bokaro Steel Ltd. vs. Presiding Officer, Labour Court at Bokaro, Steel City, Dhanbad & Anr.*** [(1980) 3 SCC 734] ("***SAIL's case***" for short).

27. The respondent delinquent was employed as Registration Assistant in the Medical Department of the appellant company by its Personal Manager. The Chief Medical Officer of the hospital served two charge sheets on him, for alleged acts of misconduct and also constituted a Committee to inquire into the charges. The Personal Manager of the company found him guilty of the charges, and dismissed him from service. Application was made on behalf of the appellant company before the

Labour Court, under Sec.33(2)(b) of the Industrial Disputes Act, seeking approval of the penal action taken against the employee. The respondent employee objected, contending that the appointing authority is the Disciplinary Authority for the alleged misconduct and that Personal Manager of the Company, being his appointing authority, was the only authority, according to the Rules competent to issue charge sheets and constitute the Inquiry Committee and that therefore, framing of charge sheets by the Chief Medical Officer (CMO) and the constitution of the Inquiry Committee by him were without jurisdiction. The Labour Court held that the CMO was incompetent under the Rules to frame charges against the respondent and to constitute the Inquiry Committee and accordingly, held that the Domestic Inquiry was defective and invalid, but also held that the Company's case could not be dismissed at that stage and that the appellant company should be given an opportunity to adduce evidence, in support of the action it had taken against the respondent.

28. Two writ petitions were filed before the Patna High Court, one by the respondent employee for quashing that part of the order which permitted the appellant company to lead evidence in support of its action in dismissing him and the other by the Company questioning the finding that the CMO was not competent to frame the charges and to constitute the

Inquiry Committee. The High Court dismissed both the Writ Petitions and SLP was filed by the company challenging the finding made by the Labour Court and approved by the High Court.

29. The Apex Court noted that the Board of Directors had approved the Discipline and Appeal rules, which contained provisions concerning misconduct, nature of penalties and authorities competent to impose the penalties, the procedure for imposing minor and major penalties etc. However, it was contended that certain changes were brought in by some resolutions passed by the Board of Directors, which enabled the Chairman/Managing Director to authorize to sub-delegate his powers with the heads of Office under him and the subsequent resolution abolished the title of Senior Executive Medical Officer and the new post of CMO was created in its place as the Head of the Department. However, the Apex Court held that those resolutions have not formed the part of the service rules approved by the Board of Directors. It is on this ground that the Apex Court agreed with the concurrent findings of the High Court and the Labour court and held that Discipline and Appeal rules of the Company, which have been approved by the Board of Directors, did not authorise the CMO to frame charges against the employee or to constitute the Inquiry Committee. A reading of SAIL's decision would show that the previous

decision of the Apex Court in ***Shardul Singh's case*** supra [(1970) 1 SCC 108] has not been considered.

(xi) ***Union of India (UOI) & Ors. v. K.V.Jankiraman & Ors.*** ("***K.V.Jankiraman's case***" for short) [(1991) 4 SCC 109= AIR 1991 SC 2010]

30. A reading of paragraph 8 of the aforecited celebrated 3 Judge Bench decision of the Apex Court in ***K.V.Jankiraman's case*** supra, would indicate that the first question considered therein is as to what is the date from which it can be said that disciplinary proceedings/criminal proceedings are pending against an employee. In paragraph 16 thereof, it has been observed that, on the first question, as to when the disciplinary proceedings can be said to have commenced, the Full Bench of the Tribunal in the impugned order therein has held that it is only when a charge memo in a disciplinary proceedings is issued to the employee that it can be said that Departmental proceedings is initiated against the employee. The Apex Court has further held, in paragraph 16 thereof, that mere pendency of preliminary investigation, prior to that stage, will not be sufficient and that their Lordships of the Apex Court are in agreement with the Tribunal on this point. Hence, it can be seen that the Apex Court has held that a disciplinary proceedings can be said to be pending against an employee, only when a charge memo or charge sheet in a disciplinary proceedings is

issued to the employee concerned. A reading of para 16 would indicate that the words "when the disciplinary proceedings is said to have commenced" and "when the disciplinary proceedings is initiated" against the employee etc, have been used interchangeably. A reading of the said decision, more particularly para Nos.8 & 16 thereof, would indicate that the Apex Court has used the words "when the disciplinary proceedings is said to be pending", whereas the Tribunal, in the impugned order, has used the words, "when the disciplinary proceedings is initiated." But, going by the question raised for consideration, as stated in paragraph 8 thereof, it is clear that the *ratio decidendi* of the decision of the Apex Court in ***K.V.Jankiraman's case*** supra, is that a disciplinary proceedings is said to have commenced against a delinquent employee, only when memo of charges or charge sheet in the disciplinary proceedings is issued to him. Various other issues, as to the parameters for denial of promotion, have also been dealt with in the said decision, about which, we are not concerned in this case.

(xii)***Union of India & Ors vs. Anil Kumar Sarkar*** ("***Anil Kumar Sarkar's case***" for short) [(2013) 4 SCC 161]

31. The Apex Court, in ***Anil Kumar Sarkar's case*** supra, has placed reliance on paragraph 16 of the dictum laid down by the 3 Judge Bench of the Apex Court in ***K.V.Jankiraman's case*** supra. Further,

the Apex Court, in paragraph 21 of ***Anil Kumar Sarkar's case*** supra, has categorically laid down that disciplinary proceedings can be said to have commenced only when a charge sheet is issued. Further, it is also observed in paragraph 21 that Departmental proceedings is normally said to be initiated only when a charge sheet is issued. Paragraph 21 thereof reads as follows:

> "***21.*** *We also reiterate that the disciplinary proceedings commence only when a charge-sheet is issued. Departmental proceeding is normally said to be initiated only when a charge-sheet is issued.*"

32. A reading of para 21 would also indicate that the words "commencement of disciplinary proceedings" and "initiation of disciplinary proceeding" have been interchangeably used, but the essence and substance of the ratio of the said decision is that in view of the dictum laid down in ***K.V.Jankiraman's case*** supra, that disciplinary proceedings can be said to have commenced, only when a memo of charge or charge sheet in a disciplinary proceedings is issued to the employee concerned.

(xiii) ***Delhi Development Authority v. H.C. Khurana***, [(1993) 3 SCC 196] ("***H.C. Khurana's case***" for short)

33. The 2 Judge's Bench of the Apex Court, in paragraph 9 of ***H.C. Khurana's case*** supra, had considered the different stages of decision taken to initiate disciplinary proceedings and the stage of commencement of the disciplinary proceedings by the issuance of charge sheet. The said

issue arose in the factual context of that case, whereby paragraph 2 of OM dated 12th January 1988, which was the guideline applicable at the material time, provided for categories of Government servants in whose case, sealed cover procedure could be adopted. Clause II of paragraph 2 of OM dated 12.01.1988 provided:

> *"Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings"* .

OM dated 14th September 1992 substituted a new clause (ii), which provided thus :

> "*Government servants in respect of whom, a charge sheet has been issued and disciplinary proceedings are pending*;.."

(see paragraphs 4 & 5 thereof)

34. A reading of paragraph 16 would indicate that the decision to initiate disciplinary proceedings against the respondent employee therein had not been taken or the charge sheet had also not been issued to him prior to the day on which the DPC had adopted the sealed cover procedure. The Apex Court had held, in paragraph no.9 thereof, as to what is the stage when it can be said that a decision has been taken to initiate disciplinary proceedings. It was held therein that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of charge sheet, since the issue of the charge sheet is a consequence of the decision to initiate disciplinary proceedings. Framing the charge sheet is the first step taken

for holding the inquiry into the allegations, consequent to the decision taken to initiate the disciplinary proceedings. It was thus, held that service of charge sheet on the employee follows the decision to initiate disciplinary proceedings and it does not proceed or coincide with that decision. Paragraph no.9 of ***HC Khurana's case*** supra reads as follows:

> "*The question now, is : What is the stage, when it can be said, that 'a decision has been taken to initiate disciplinary proceedings'? We have no doubt that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge-sheet, since issue of the charge-sheet is a consequence of the decision to initiate disciplinary proceedings. Framing the charge-sheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The charge-sheet is framed on the basis of the allegations made against the government servant; the charge-sheet is then served on him to enable him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise, an enquiry is held into the charges; if the charges are not proved, the proceedings are closed and the government servant exonerated; but if the charges are proved, the penalty follows. Thus, the service of the charge-sheet on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. The delay, if any, in service of the charge-sheet to the government servant, after it has been framed and despatched, does not have the effect of delaying initiation of the disciplinary proceedings, inasmuch as information to the government servant of the charges framed against him, by service of the charge-sheet, is not a part of the decision-making process of the authorities for initiating the disciplinary proceedings.*"
>
> *(emphasis supplied)*

(xiv) ***State of Andhra Pradesh & Ors. v. Ch.Gandhi*** ("***Gandhi's case***" for short) (2013 (5) SCC 111)

35. In para 18 of ***Gandhi's case*** supra, the Apex Court has relied on paragraph 9 of ***H.C. Khurana's case*** supra, regarding the different stages of decision to initiate disciplinary proceedings and the stage of commencement of the disciplinary proceedings by the issuance of the

charge sheet. So, it can be seen that in Gandhi's case supra, the Apex Court has again re-iterated the position that framing the charge sheet is the first step taken for holding the inquiry in the allegations, consequent to the decisions taken to initiate the disciplinary proceedings.

(xv) ***Union of India & Ors. vs. B.V.Gopinath*** ("***B.V.Gopinath's case***" for short) [(2014) 1 SCC 351]

36. In the afore cited two Judge Bench decision, the Apex Court dealt with a case wherein the delinquent was a member of the Indian Revenue Service (IRS), in which he had joined in the year 1987 as the Assistant Commissioner of Income Tax. He has secured various higher promotions and was Additional Commissioner of Income Tax in the year 2000. The Apex Court has considered the provisions of Rule 14(2) and Rule 14(3) of the Central Civil Services (Classification, Control and Appeal Rules), 1965, viz, the CCS (CCA) Rules. This was so examined in the context of the issue as to the different stages of the disciplinary proceedings, viz the initiation of disciplinary proceedings at Rule 14(2) and the stage of commencement of the disciplinary proceedings by issuance of charge sheet at Rule 14(3). Rule 14(2) provided as follows:

> "(2) *Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a Government Servant, it may itself inquire into or appoint under this Rule or under the provisions of the Public Servants (Inquiries)Act, 1850 as*

the case may be, an authority to inquire into the truth thereof."

[Explanation omitted]

37. Rule 14(3) of the CCS (CCA) Rules provided as follows:

> "(3)*Where it is proposed to hold an inquiry against a Government servant under this Rule and Rule 15, the disciplinary authority shall draw or cause to be drawn up -*
>
> *(i) the substance of the imputations of misconduct or misbehavior into definite and distinct articles of charge ;*
>
> *(ii) The statement of the imputations of misconduct or misbehavior in support of each article or charge shall contain – (a) a statement of all relevant facts including any admission or confession made by the Government servants; (b) a list of documents by which a list of witnesses by whom the articles of charge are proposed to be sustained.*

Rule 14(4) stipulates that:

> *"(4) Disciplinary authority shall deliver or cause to be delivered to the Government servant, a copy of the articles of charge, the statement of imputations of misconduct or misbehavior and a list of documents and witnesses by which each article or charge is proposed to be sustained and shall require the Government servant to submit within such time as may be specified, a written statement of his defence and state whether he desires to be heard in person."*

38. In para 27 thereof, the Apex Court has referred to the plea that the employee belongs to the Indian Revenue Service and that the President of India is the appointing authority and that the said power of the President has been delegated, under Article 77(3) of the Constitution of India and by an order of the President dated 14.01.1961 under the Government of India (Allocation of Business) Rules, to the Finance Minister. That, thus, the Finance Minister is to act as the disciplinary authority for the purpose of Article 311 of the Constitution of India and Rule 14 of the CCS (CCA) Rules etc. Paragraphs 10, 12, 23, 42, 43, 44, 45

etc deals with the Office Order No.205/2005 dated 19.07.2005, setting out the levels of the decision making authorities depending on the gravity of the consequences that would have to be faced by a delinquent public servant, in case decision is taken to proceed against him. Paragraphs 23 & 43 mentions about Clause 8 of the Office Order No.205/2005, dated 19.07.2005, which mandates that approval of charge sheet has to be granted by the Finance Minister in such a case involving a member of the Indian Revenue Service. Clause 9 of the Office order required that, if there has to be any dropping/modification/amendment of the memo of charges, after receiving the written submission of defence, then also the file has to be put up to the Finance Minister.

39. In para 30 of ***B.V.Gopinath's case*** supra, the Apex Court has considered the issue as to whether the stage of initiation of disciplinary proceedings is the same as issuing a charge sheet/charge memo. It was held therein that, a plain reading of Rule 14(2) and Rule 14(3) of CCS (CCA) Rules would make it amply clear that the only interpretation possible is that the stage of disciplinary proceedings under Rule 14(2) is distinct and separate from the stage of issuing a charge memo under Rule 14(3) and it is not a continuing act because, it is not necessary that every disciplinary proceedings initiated would definitely result in issuing a

charge memo because after initiating disciplinary proceedings, it may be found from materials on record that the memo of charge need not be served because the charges may not be made out or a lesser charge could be made out. Mind has to be applied to the evidence and materials on record, pursuant to the initiation of disciplinary proceedings to again come to a fresh decision as to whether now, a charge memo deserves to be issued. Thus, the Apex Court has dealt with the difference in the stages of initiation of disciplinary proceedings at Rule 14(2) and commencement of disciplinary proceedings by the issuance of charge sheet at Rule 14(3). In paragraph 50, the Apex Court found that the records reveal that the file was put up to the Finance Minister by the Director General of Income Tax (Vigilance), seeking approval of the Finance Minister for sanctioning prosecution and for initiation of major penalty proceedings. But, ultimately, it appeared that the charge memo was not put up for the approval by the Finance Minister. Hence, the Apex Court has held that the mandatory provisions in Clause 8 of Office Order No.205/2005, which required the approval of the charge sheet/charge memo to be granted by the Finance Minister, has not been fulfilled in the said case and hence, it was held that the disciplinary proceedings against the delinquent, who was a member of the Indian Revenue Service, without obtaining the mandatory approval of the competent authority of the Finance Minister to the memo

of charges/charge sheet is illegal and *ultra vires*. In para 41 thereof, the Apex Court has overruled the plea of the Additional Solicitor General that, once the disciplinary authority approves the initiation of disciplinary proceedings, the charge sheet can be drawn up by an authority, other than the disciplinary authority. In that regard, the Apex Court has incidentally observed, in paragraph 41, that this would destroy the underlying protection guaranteed under Article 311(1) of the Constitution of India, which provision ensures that no public servant is dismissed, removed, suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. That, such a charge sheet can only be issued upon approval. That, in the facts of that case, it was held, that such a charge sheet can be issued only upon approval by the appointing authority, ie, the Finance Minister, going by the abovesaid norms. However, the Apex Court, in para 52 of ***B.V.Gopinath's case*** supra, has relied on the dictum laid down in ***P.V.Srinivasa Sastry's case*** supra [(1993) 1 SCC 419], wherein it was held that Article 311(1) does not say that even departmental proceedings must be initiated only by the appointing authority and that it has been held in para 4 of ***Srinivasa Sastry's case*** supra that it is open to the Government to make any Rule prescribing that even the proceedings against the delinquent officer shall be initiated by an officer not

subordinate to the appointing authority and that any such protective rule is not inconsistent with Article 311, but it only amounts to providing an additional safeguard or protection to the holders of a civil post, over and above the protection guaranteed under Article 311. It is also to be noted that the dictum laid down in ***P.V.Srinivasa Sastry's*** case supra [(1993) 1 SCC 419] has been fully relied on and approved by a 3 Judge Bench of the Apex Court in ***F.X.Fernando's case*** supra, 1994 (2) SCC 746). So, a reading of the 2 Judge Bench's decision of the Apex Court in ***B.V.Gopinath's case*** supra, more particularly, paragraph 52, in the light of the various other Rulings of the Apex Court mentioned herein above, more particularly ***P.V.Srinivasa Sastry's case*** supra and ***F.X.Fernando's case*** supra, would really lead to the legal position that, ordinarily, in the absence of any rule, Article 311, by itself, does not guarantee that disciplinary proceedings should be initiated only by an officer who is not subordinate to the appointing authority. However, if the rule so prescribes, as to the authority who has to initiate and commence the disciplinary proceedings etc, then the same would amount to an additional safeguard to the public servant, over and above the minimal protection guaranteed by Article 311. In ***B.V.Gopinath's case*** supra, there was a specific provision in Clause (8) of the Office Order No.205 of 2005 dated 19.07.2005, that in the case of the members of the Indian Revenue Service,

the approval of the competent authority, viz the Finance Minister was required to be granted for the issuance of charge sheet and since the said mandatory stipulation was contravened, the said additional safe guard was violated, whereby the impugned action became illegal and ultra vires.

(xvi) ***State of Tamil Nadu vs. Pramod Kumar IPS & Anr.*** *("**Pramod Kumar's case**"* for short) [(2018) 17 SCC 677]

40. The delinquent employee involved in this case was a member of the Indian Police Service (IPS), which is comprised in the All India Service. A reading of paragraph 16 would indicate that the Apex Court has noted that Rule 14 of the CCS(CCA) Rules, considered in ***B.V.Gopinath's case*** supra, in the case of members of IRS are almost pari materia to the provisions contained in Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969, which is applicable to the members of the All India Service, like IPS etc. Rule 7 of the aforesaid All India Service (Discipline and Appeal) Rules mandated that the authority to institute proceedings and to impose penalty on a member of the All India Service is the State Government, if he is serving in connection with the affairs of the State. The competent authority to act on behalf of the State Government, as per the rules of business framed, as per the provisions of the Constitution, was the Minister for Home Department, which portfolio, at the relevant time, was held by the Chief Minister. Further, matters relating to disciplinary action

against members of All India Services, like IPS, IAS, IFS, officers, have to be dealt with by the Chief Minister. Further, a reading of paragraph 19 would indicate that matters relating to disciplinary action against IPS, IAS & IFS officers have to be dealt with by the Chief Minister as per standing order no.2 dated 09.01.1992 issued under Rule 35(4) of the Business Rules. In paras 20 & 21 thereof, the Apex Court has found that approval of the competent disciplinary authority, namely the Hon'ble Chief Minister, was taken for initiation of the disciplinary action, but it was revealed that no approval was sought for from the said competent disciplinary authority at the time when charge memo was issued to the delinquent officer. The argument of the State was that the approval of the disciplinary authority, for initiation of disciplinary proceedings, was sufficient and there was no need for another approval for issuance of the charge memo. The Apex Court held that, in the light of the dictum laid down in ***B.V.Gopinath's case*** supra, though, approval of the competent authority was obtained for initiation of disciplinary proceedings, such approval was not obtained from the said authority at the time of issuance of the memo of charges under Rule 14(3) of the CCS(CCA) Rules and hence, the impugned disciplinary proceedings were quashed. It was also noted that, in ***B.V.Gopinath's case*** supra, the Apex Court held that the step of even drawing up or causing to draw up the memo of charges, as per Rule 14(3) of the CCA

Rules, would require the approval of the competent authority. Accordingly, in paragraph 22 of ***Pramod Kumar's case*** supra, the Apex Court held that the impugned action, in not securing approval of the competent disciplinary authority, at the stage of issuance of the charge memo, was illegal and ultra vires.

(xvii) ***M.C.Vasudevan vs. SNDP Yogam*** [(1958) KLT 48 (DB) =(1958) KLJ 538) = (AIR 1958 Ker. 164)]

41. In para 4 of the aforesaid decision, rendered by a Division Bench comprising of M.S.Menon,J, (as his Lordship then was) and P.T.Raman Nair, J, (as his Lordship then was), it has been, *interalia,* held that the Court cannot accept the argument that the impugned notices should not be ignored because they do not purport to be issued by or on behalf of the Board concerned and that no decision has been cited in support of the proposition that the charge and the demand for explanation must proceed from the very same authority competent to inflict the punishment and on principle, their Lordships see no reason why this should not proceed from some subordinate authority. It was held that, it is not as if the Council and the General Secretaries, who issued Exts.P3 & P7 therein, were outsiders, having no right to question the petitioner with regard to their alleged misconduct and that the said persons are persons in authority etc. So, this Division Bench Judgment is an authority for the

general proposition that the memorandum of charges and the demand for explanation need not necessarily proceed from the very same authority competent to inflict the punishment and on principle, such proceedings, regarding charge and demand for explanation could proceed from some authority subordinate to the punishing authority, so long as the said subordinate authorities, are not outsiders and they can be treated as persons in authority as per the norms.

(xviii) ***Madhavan Nair Vs. Commissioner for Hindu Religious and Charitable Endowments (HR&CE) & Ors.*** (1963 KLT 480)= (1963 KHC 129).

42. This case was concerned with the suspension from service of a manager of a Hindu Religious Institution, ordered at the behest of the Commissioner of the HR&CE Department. Paragraph No.5 would indicate that the petitioner, though designated as a Manager, has satisfied the definition of "Executive Officer". Rule 15 empowered the appointing authority (Commissioner) to impose penalties, ranging from censure to dismissal of Executive Officers. The last sentence of 1st paragraph of Rule 16 prescribed the procedure to be followed and it said that "*an Executive Officer may be placed under suspension, pending inquiry into grave charges, where such suspension is necessary in public interest and in the interest of religious institutions concerned.*" This Court held that, although

the rule does not say as to who may make an order of suspension, it is obvious that atleast the authority competent to dismiss must have that power and therefore, it is clear that the rule confers power on the Commissioner, the power to suspend the petitioner, pending inquiry into grave charges. This Court held that the word "charges", appearing in the aforesaid Rule 16, would only mean "accusations" and has no reference to the formal charges, namely the memo of charges, which under the earlier part of the Rule have to be framed in the course of an inquiry, so that the rule does not mean that suspension can be ordered only after formal memo of charges have been framed, where such suspension is necessary in the public interest.

(xix) ***Mathew Joseph vs. Registrar of Co-operative Societies***

[2022 (6) KLT Online 1187 = ILR 2022 (4) Ker. 555]

43. The Division Bench of this Court, in para 9 in the aforecited decision in ***Mathew Joseph's case*** supra, has held that an order of suspension from service, in terms of Rule 198(6) of the KCS Rules, cannot exist independent of a charge memo, whether issued simultaneously or within a reasonable time thereafter etc. In other words, an order suspending an incumbent from service ,as per Rule 198(6) of the KCS Rules, can be issued before or after the issuance of the memo of charges, but where in the latter case of the charge memo being issued after the

suspension order, then the charge memo will have to be issued within a reasonable time, after the issuance of memo of charges.

(xx) ***Pattanakkad Coir Mats & Matting Co-operative Society Ltd.*** *v.* ***Project Officer (Coir)*** ["***Coir Mats Society's case***" for short] [1998 (1) KLT 570 = 1998 KHC 107 = 1998 (1) KLJ 506 = ILR 1998 (3) Ker. 303]

44. In this case, the delinquent employee was suspended from service, in order to facilitate a detailed enquiry into the allegations against him, by invoking the power under Rule 198(6) of the KCS Rules. At the time of suspension, no formal memo of charges was issued to him. However, the specific case of the co-operative society employer was that they had materials to disclose that there were serious allegations of irregularities and misconduct committed by the delinquent and that, to facilitate an enquiry into those allegations, the employer found it necessary to suspend the employee from service. The suspension order was challenged by the employee before the notified Registrar, by initiating proceedings under Rule 176 of the KCS Rules. The notified Registrar held, as per the impugned order, that the word "*charge*", appearing in Rule 198 (6), should be a precise formulation of definite acquisitions and that before invoking the power to suspend an employee, there should have been not only materials disclosing allegations against the employee, but the competent authority should have issued a memo of charges to him. That,

the employer should have issued and served the memo of charges and statement of allegations to the employee and after getting his explanation, should have considered whether enquiry is to be conducted or not, etc. Hence, the notified Registrar took the stand that the impugned order or suspension therein, is *ultra vires* the provisions contained in Rule 198(6) of the KCS Rules, inasmuch as there was no memo of charges issued against the employee. Accordingly, the notified Registrar had rescinded the resolution of the employer-Society, which decided to suspend the employee from service. Being aggrieved thereby, the employer-Society had preferred the writ proceedings in that case before this Court. After construing the provisions contained in Rule 198(6), this Court held, in para 4 of the said decision, that the word "*charge*", appearing in Rule 198(6), need not necessarily be the definite memo of charges and statement of allegations issued to the delinquent. That normally, an employee is suspended from service, in order to facilitate an enquiry against him and for this purpose, at the time of ordering the suspension, there should have been some materials in the possession of the employer, which compels him to make a detailed enquiry against the delinquent employee. That, it is after collecting all materials that formal charges should be served on the delinquent employee. That, if the interpretation given by the Registrar in that case is accepted, then an employee cannot be suspended, even if there

are *prima facie* materials to show that the employee has committed misconduct. Hence, this Court held that the word "*charge*", appearing in Rule 198(6), does not mean that, formal charges should have been necessarily framed against the delinquent employee, prior to the issuance of the suspension order.

45. In that case, this Court had also placed reliance on the decision of the Apex Court in ***S.Partap Singh*** *v.* ***State of Punjab*** [AIR 1964 SC 72 para 54]. Para 4 of ***Coir Mats Co-operative Society's*** *case* supra [1998 (1) KLT 570], pp.571-572, reads as follows:

"**4.** *Now, let us examine Ext. P8 order and the grounds on which the resolution was rescinded. In paragraph 12 of Ext P8 order it is stated thus:*

> *"no charge memo has been issued to Sri. V.R. Retnappan by the Society..... A charge is a precise formulation of a definite accusation.....Therefore, in my opinion nothing worth being called a charge has been raised or formulated against Sri. V.R. Retnappan. Only suspension pending enquiry into the serious charges is authorised by R. 198(6). The usual procedure of preparing a charge memo and statement of allegations serving it on the employee, getting his explanation, considering it and deciding whether an enquiry is to be conducted or not and appointing an Enquiry Officer if the explanation is found unsatisfactory is not seen followed in this case. In such circumstances, I find that the order of suspension is violative of R. 198(6) of the Kerala Co-operative Societies Rules 1969".*

Thereafter, in paragraph 13 of the order, it is stated thus:

> *"On a perusal of the entire records of the case, I find that the Board of Directors of the Society had arrived at the decision to place Sri. V.R. Retnappan under suspension without proper application of mind to the relevant materials".*

The Registrar supports her view in paragraph 14 by stating thus :

> *"It is needless to state that the resolution of the Board of Directors of the Society to place an employee under suspension illegally is one which is calculated to disturb the peaceful and orderly working of the Society. It is also contrary to the*

> *better interest of the Society. It will have a demoralising effect of the members of the staff of the Society as a whole".*
>
> *In the above order, the first ground for rescinding the resolution is that no formal charges have been made. According to the first respondent, to suspend an employee under R. 198(6) it is necessary that a formal memo of charges should have been issued to the delinquent employee. R. 198(6) only states that serious charges should have been levelled against the delinquent employee. I don't think that the word 'charge' is used to mean that a definite memo of charges should have been issued to the delinquent employee. Normally, an employee is, suspended in order to facilitate an enquiry against that employee. For this purpose, at the time of ordering suspension, there should have been some materials in the possession of the employer, which compels him to make a detailed enquiry against the delinquent employee. It is after collecting all the materials that formal charges should be served on the delinquent employee. If the interpretation given by the Registrar is accepted, the employee cannot be suspended even if there are prima facie materials to show that the employee has committed misconduct. Hence, according to me, the word 'charge' occurring in R.198(6) of the Rules does not mean that formal charges should have been framed against the delinquent employees."*

(xxi) ***S.Partap Singh v. State of Punjab*** [AIR 1964 SC 72] ("***Partap Singh's case***" for short)

46. This decision has been rendered by a Constitution Bench of five Judges of the Apex Court. In that case, the contention of the appellant was that Rule 3.26(d) of the Punjab Civil Service Rules, 1959, is not applicable to him and even if it be applicable, his case is not covered by the terms of that Rule. The second contention was that the impugned order is vitiated by malafides (see para 34).

47. The Government had ordered the suspension of the appellant from service with immediate effect, as the Government had decided that a departmental enquiry be instituted against him under the Rules. The Governor further passed an order under Rule 3.26(d). Rule 3.26(d)

provided as follows (see para 51):

> *"A Government servant under suspension on a charge of misconduct shall not be required or permitted to retire on his reaching the date of compulsory retirement but should be retained in service until the enquiry into the charge is concluded and a final order is passed thereon."*

48. The majority view of 3 Judges has held, in para 30 thereof, that the appellant has failed to make out that the impugned orders were contrary to the Service Rules. However, the majority view has found that the plea of malafide is made out and thus, the majority view of three judges has interfered in favour of the appellant, by setting aside the impugned proceedings and allowing the appeals. The minority view of 2 Judges, also found that the impugned proceedings is within the terms and conditions of the aforesaid Rule 3.26(d), but that the plea of malafide is also not made out. Hence, the minority view has held that the appeal is to be dismissed. The reasonings for holding that the impugned action is within the purview of Rule 3.26(d) supra, are mainly contained in para 54. The specific contention of the appellant in that regard was that, even if the Rule applies to a Government servant under suspension on a charge of misconduct, it can apply only to a Government servant against whom formal departmental enquiry has been instituted for enquiring into the charges of misconduct framed against him and that, in that case, no such formal charges being framed and as a departmental enquiry was instituted prior to

the suspension order, the order of suspension cannot be said to be within the purview of Rule 3.26(d). This plea was overruled by holding, in para 54 thereof, that the said Rule 3.26 (d) comes into play only after a *prima facie* case is made out against a Government servant and not at the stage of preliminary investigation into accusations against a Government servant. But, it does not follow that suspension is not permissible till the stage of making a formal charge arrives. Rule 3.26(d) was held to be of general application and therefore, the expression "*charge of misconduct*" appearing in that Rule, is not to be interpreted narrowly, as to mean "charges formally framed and communicated to the Government servant concerned", with the intimation that formal departmental enquiry had been initiated against him on those charges. It was held that the abovesaid contention does not find any support from the last portion of Rule 3.26(d), which reads "..... *until the enquiry into the charge is concluded and a final order is passed thereon*". It was held that the enquiry, contemplated in that Rule, would be into the charges of misconduct, on account of which the Government servant has been suspended from service and the suspension will continue till a final order is passed on those charges. It was held that, whenever a charge of misconduct is under enquiry by the Government, be it informally or formally, the Government is competent to suspend the Government servant and if the requirements of the case

require to take action under Rule 3.26(d). Para 54 of ***Partap Singh's case*** *supra* [AIR 1964 SC 72], reads as follows :

> *"**54.** This rule comes into play only after a prima facie case is made out against a Government servant and not at the stage of a preliminary investigation into accusations made against a Government servant. But it does not follow that suspension is not permissible till this stage of making a formal charge arrives. Rule 3.26(d) is of general application and therefore the expression 'charge of misconduct' in this rule is not to be interpreted narrowly as meaning 'the charges formally framed and communicated to the government servant concerned' with the intimation that a format departmental enquiry had been initiated against him on those charges. The appellant's contention does not find any support, as urged, from the last portion of this rule which reads "until the enquiry into the charge is concluded and a final order is passed thereon". Of course, the enquiry would be into the charges of misconduct on account of which the Government servant has been suspended and the suspension will continue till a final order is passed on those charges. The requirements of the last portion of this rule do not in any way lead to the conclusion that the enquiry into the charges refers to a formal departmental enquiry into the charges framed and communicated to the Government servant in accordance with Rule 7 of the Punishment and Appeal rules. We are of opinion that whenever any charge of misconduct is under enquiry by the Government, be it informally or formally, the Government is competent to suspend the Government servant and if the requirements of the case require to take action under Section 3.26(d)."*

49. So, it can be seen that it has been held by the Apex Court in the aforesaid decision that the word "*charge*", appearing in Rule 3.26(d) supra, is not confined merely to the scenario of issuance of formal memo of charges/charge sheet, but would also be inclusive of cases where there are *prima facie* materials with the employer which discloses serious allegations of misconduct against the employee concerned.

(xxii) ***Kodanchery Service Co-operative Bank Ltd. v. Joshy Varghese*** ("***Kodanchery's case***" for short) [2020 (4) KLT 129 (DB) = 2020 KHC 5394 = 2020 (3) KLJ 474]

50. In this case, the writ petitioner, who was a Branch Manager of

the appellant-Society, was suspended from service on 16.06.2017. The disciplinary sub-committee issued the memo of charges. The writ petitioner submitted reply and on finding that the reply was unsatisfactory, an Enquiry Officer was appointed by the disciplinary sub-committee. The Enquiry Officer conducted enquiry and submitted enquiry report. On the basis of the enquiry report, the disciplinary sub-committee imposed order dated 12.09.2018 (Ext.P-8 therein), dismissing him from service. The delinquent preferred statutory appeal, which was dismissed by the appellate authority (Managing Committee), as per order dated 11.06.2019 (Ext.P-9 therein).

51. The learned Single Judge, as per judgment dated 21.11.2019 in W.P(C) No.22228/2019 filed by the delinquent, has held that the disciplinary proceedings are invalid and vitiated, as the power to issue memo of charges is solely vested with the appointing authority (managing committee), whereas in the said case, the memo of charges was issued by the disciplinary sub-committee.

52. W.A No.11/2020 was preferred by the co-operative society employer, for impugning the afore judgment of the Single Bench. The Division Bench in the aforecited ***Kodanchery's case*** supra [2020 (4) KLT 129 (DB)], has also held that, going by the scheme under Rule 198, memo of charges could have been issued only by the appointing

authority (Managing Committee). In that case, the memo of charges was actually issued by the disciplinary sub-committee, constituted as per Rule 198(2A). That, the purpose of constituting a disciplinary sub-committee, as per Rule 198(2A), was to enquire into the memo of charges already framed by the appointing authority, etc. The main reasonings of the Division Bench in ***Kodanchery's case*** *supra*, for arriving at the abovesaid conclusion, are contained in para 5 of that decision [2020 (4) KLT 129 (DB), p.p. 133 - 135], which reads as follows :

> " ***5***. .....
>
> *Rule 198(2) of KCS Rules mandates that no kind of punishment shall be awarded to an employee unless he has been informed in writing of the grounds on which it is proposed to take action against and he has been afforded an opportunity including a personal hearing to defend himself. Going by Rule 198(2A) evidently, the power to constitute a disciplinary sub-committee, consisting of not more than three of its members, of whom one shall be designated as Chairman, vests with the 'committee of the society'. Rule 198(2B) of the KCS Rules provides that the disciplinary committee so constituted under Rule (2A) shall inquire into the charges against the employee, either by themselves or by engaging an external agency. Before proceeding further it is only appropriate to consider the meaning of the words 'charge' and 'chargesheet'. Charge means any specific act/acts, omission/omissions alleged to have committed by an employee and 'chargesheet' is a memorandum of charges which carry allegations of acts or omissions alleged to have been committed by him. In other words, it is one which carries allegations of misconduct, misbehaviour, indiscipline, negligence etc. The very objective of issuance of memo of charges is to inform the delinquent employee what he is supposed to defend or what he is alleged to have done. Thus, a conjoint reading of S.2(e) of the KCS Act and Rules 182(2) and 198(2) of the KCS Rules the committee of the society concerned which is the authority competent to appoint employees in a Co-operative Society, is bound to inform the delinquent employee in writing, of the grounds on which it is proposed to take action against him/her. At this juncture, it is only worthwhile to refer to the decisions of the Hon'ble Apex Court in Union of India v. K.V.Jankiraman (1991 (2) KLT OnLine 1024 (SC) = AIR 1991 SC 2010), Union of India & Ors. v. Anil Kumar Sarkar (2013 (2) KLT SN 29 (C.No.33) SC = (2013) 4 SCC 161) and in Government of Andhra Pradesh v. Gandhi (2013 (1) KLT SN 121 (C.No.106) SC). In Jankiraman's case (supra)*

the Apex Court held that disciplinary proceedings can be said to be commenced only when memorandum of charges is laid. Same view was taken in Anil Kumar Sarkar's case (supra) wherein it was held that departmental proceedings commence only when charge sheet is issued to the delinquent employee. In Gandhi's case (supra) the Apex Court held that decision to initiate disciplinary proceedings could not be subsequent to the issuance of charge sheet. If we analyse the provision under Rule 198(2A) and (2B) of the KCS Rules in the light of the decisions in Jankiraman's case, Anil Kumar Sarkar's case and Gandhi's case (supra) and the indisputable and unambiguous position from Rule 198(2B) that it only mandates that the disciplinary sub-committee constituted by the Managing Committee of a society concerned shall inquire into the charges against employee concerned either by themselves or by engaging an external agency the scope of the provision under Rule 198(2B) would be revealed. It would reveal that the provision under Rule 198(2A) only mandates the committee of a society, which is the appointing authority of its employees, to constitute a disciplinary sub-committee and the provision under Rule 198(2B) empowers the disciplinary sub-committee so constituted, statutorily, only to inquire into the charges against the employee, either by themselves or by engaging an external agency. The constitution of a disciplinary sub-committee pre-supposes two things viz., a decision has been taken to initiate disciplinary proceedings against an employee or employees in respect of a misconduct and secondly, in pursuance of the said decision a memorandum of charges has been framed and issued. We are holding thus, as in view of the decision in Gandhi's case (supra) decision to initiate disciplinary proceedings cannot be subsequent to issuance of charge sheet and in view of the decision in Jankiraman's case (supra) and Anil Kumar Sarkar's case (supra) disciplinary proceedings commence only when charge sheet is issued to the delinquent employee. When the statute empowers under Rule 198(2B) of the KCS Rules only to inquire into the charges against an employee, either by themselves or by engaging an external agency if prior to the constitution of the disciplinary sub-committee charges are not framed what would be there for the disciplinary sub-committee to inquire into. In other words, when the very purpose of constituting a disciplinary sub-committee is to inquire into charges against the employee concerned and at the same time Rule 198(2B) does not specifically empowers the said disciplinary sub-committee to frame definite charges against an employee of a society, according to us, a different construction of the said provision is not permissible in the light of the aforesaid decisions. In this situation it pertinent to refer to the decisions of the Hon'ble Apex Court in Bhavnagar University v. Palitana Sugar Mill (P) Ltd. & Ors. reported in (2003 (1) KLT OnLine 1111 (SC) = (2003) 2 SCC 111) and in Union of India & Ors. v. B.V.Gopinath reported in (2013 (4) KLT Suppl. 38 (SC) = (2014) 1 SCC 351). In Bhavnagar University's case (supra) the Apex Court held that the charge memo drawn by an officer other than the specified authority would be wholly without jurisdiction and hence, would vitiate the whole disciplinary enquiry and that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. Further, it was held therein that the State and other authorities

while acting under the statute are only creature of statute and therefore, they must act within the four corners thereof. In B.V.Gopinath's case (supra) the Apex Court was dealing with disciplinary proceedings initiated under the Central Civil Services (Classification, Control and Appeal) Rules 1965. Going by the provisions thereunder to hold an enquiry against a Government servant either under Rule 14 or 16 the disciplinary authority shall draw or cause to draw the chargesheet. Ultimately the Apex Court held that charge memo drawn by an officer other than the specified authority is wholly without jurisdiction and therefore, it would vitiate the whole disciplinary inquiry conducted against the employee concerned. In the case on hand, admittedly, Ext.P1 memo of charges was issued and it was framed and issued by the Chairman of the disciplinary sub-committee constituted for conducting disciplinary proceedings against the first respondent herein."

(xxiii) ***Kochurani Jose v. Joint Registrar of Co-operative Societies (General)*** ("***Kochurani's case***" for short) [2020 (6) KLT Online 1035 = ILR 2021 (1) Ker. 589 = 2021 (4) KLT SN.25 (C.No.19)]

53. That, in a co-operative society, which is under the management of an Administrator/Administrative Committee, in the absence of an elected managing committee in power, there can be no question of strict compliance of the requirements of Sub-Rules (2A) & (2B) of Rule 198 of the KCS Rules. The main issue decided in this case was as to the manner of taking disciplinary action against employees of co-operative societies, at a time where the elected Managing Committee is not in office and when it is under the management of a Administrator or Administrative Committee, consequent to their appointment, after the super-session of the elected Managing Committee of the society. It was also held that the appointment of an Administrator/Administrative Committee is meant for avoidance of the vacuum in the matter of administration of a society and

thus, the Administrator, so appointed, has got a bounden duty to manage the affairs of the society, during the said period, to protect the interest of the society. It was thus, held that the Administrator/Administrative Committee could take appropriate disciplinary action, if warranted, in exercise of the powers and functions of the Committee or that of any officer of the society (see para 10).

54. It was also held that, in view of the insertion of the Proviso to Rule 198(5), as per the amended provisions, if a delinquent employee is aggrieved by an order of the Administrator, imposing penalty, then the appeal could be filed by the aggrieved party before the forthcoming elected committee, without restriction of the three months' period of limitation for filing appeal, prescribed in the operative portion of sub-rule (5) of Rule 198.

55. The aforesaid aspects, dealt with in ***Kochurani's case*** supra [2020 (6) KLT Online 1035], may not be very relevant for our present purpose. It has also been held by the Division Bench in para 12 of ***Kochurani's case*** supra [2020 (6) KLT Online 1035], after placing reliance on ***Kodanchery's case*** supra [2020 (4) KLT 129 (DB)], that if the delinquent employee denies the charge and explains his conduct, in a satisfactory manner, the employer may accept the explanation and drop further proceedings and then, there is no need to conduct an enquiry.

That, initiation of disciplinary proceedings would arise when the delinquent employee refutes the charges in his explanation and the employer considers the explanation unsatisfactory and arrives at the decision to proceed with.

56. It was also held that the stage of constitution of a disciplinary sub-committee, to inquire into the charges, as envisaged in sub-rule (2A) of Rule 198, would arise only if the explanation of the delinquent, is found not satisfactory and it is found that the disciplinary action is called for.

57. It was also thus, observed that viewing the sequence of disciplinary action, as envisaged in Rule 198, it cannot be said that the disciplinary sub-committee, which is supposed to inquire into the charges, is the authority to frame the charges. Hence, it is only to be held that it is for the Managing Committee of a society to initiate disciplinary proceedings, by issuing memo of charges and the disciplinary sub-committee, constituted by the Committee of the society, could only inquire into such charges, either by itself or through an external agency, etc.

58. The relevant part of para 12 of ***Kochurani's case*** supra [2020 (6) KLT Online 1035] reads as follows :

> *"..... We have no hesitation to hold that the said contention is nothing but a cavil and if accepted, would work out detrimental to the interests of the society concerned. The contention that the disciplinary sub-committee alone could initiate disciplinary proceedings cannot be accepted, even in a case where elected committee is in power, in view of the provision under sub-rule (2B) of Rule 198 of the KCS Rules as also the decision in Kodanchery Service Co-operative Bank Ltd. v. Joshy Varghese (2020 (4)*

KLT 129). The said decision was rendered after referring to the provisions under Rule 198 of KCS Rules. In the decision it was held that a committee of a society has to initiate disciplinary action by issuing memo of charges and the disciplinary sub-committee constituted by it could only enquire into such charges by itself or through an external agency and then impose appropriate penalty in case the delinquent is held as guilty. Going by sub-rule (2A) extracted above the Committee of a society shall constitute 'a disciplinary committee' and going by sub-rule (2B) the disciplinary sub-committee so constituted shall inquire into the charges against the employee, either by themselves or by engaging an external agency. If the contention of the appellant is accepted it would suggest that firstly, a 'disciplinary sub-committee' is to be constituted and then the task of framing the charge should be left to the 'disciplinary sub-committee'. We are unable to accept the said contention. The charge-sheet is an allegation of misconduct, misbehaviour, indiscipline, lack of interest in work, negligence etc., issued with the object to inform the delinquent employee what he is supposed or alleged to have done. Normally, he will be asked thereunder to give his explanation within a specified time. If the delinquent employee denies the charge and explains his conduct in a satisfactory manner the employer may accept the explanation and drop further proceedings. Then, there is no need to conduct an enquiry. Initiation of disciplinary proceedings would arise when the delinquent employee refutes the charges in his explanation and the employer considers the explanation unsatisfactorily and arrives at the decision to proceed with. In the decision in Union of India & Ors. v. Anil Kumar Sarkar (2013 (2) KLT SN 29 (C.No.33) SC = (2013) 4 SCC 161) the Hon'ble Apex Court held that departmental proceedings would commence only when the charge sheet is issued to delinquent employee. That is why when the explanation of the delinquent employee is found satisfactory decision is being taken to drop disciplinary proceedings. In the decision in Government of Andhra Pradesh v. Gandhi reported in (2013 (1) KLT SN 121 (C.No.106) SC) the Apex Court held that decision to initiate disciplinary proceedings could not be subsequent to issuance of charge-sheet. Sub-rule (2B) of Rule 198 of KCS Rules would go to show that the disciplinary sub-committee constituted under sub-rule (2A) thereof, shall inquire into the charges against the employee. We have already taken note of the fact that the committee of a society could drop the disciplinary proceedings. In such circumstances, one can only say that the stage of constitution of a 'disciplinary sub-committee' to enquire into the charges need be constituted by the committee of a society invoking the power under sub-rule (2A) of Rule 198 only if the explanation of the delinquent employee is found unnecessary and it is found that disciplinary action is called for. Viewing the sequence of disciplinary action in the aforesaid manner how can it be said that the 'disciplinary sub-committee' which is supposed to inquire into the charges is the authority to frame the charges. Taking into account the said aspects it can only be held that it is for the committee of a society to initiate disciplinary proceedings by issuing a memo of charges and the 'disciplinary sub-committee' constituted by the committee of the society could only inquire into such charges either by itself or through an external agency."

Reference Issues :

59. Now, we would proceed to deal with the determination of the issues raised in this reference. Going by the unamended provisions of Rule 198, as it stood prior to the amendment, as per S.R.O No.1005/2010, notified in the Gazette on 02.11.2010, the following aspects would be discernible.

60. Sub-rule (3) of Rule 198 gives powers to the designated authorities, mentioned in the tabular column thereunder, to impose various penalties. President/Chairman is the authority competent to impose penalties (a) to (c) [censure, fine, withholding of increments] on officials of the rank of Secretary/Manager or other chief executive officer and all employees, holding posts higher than that of Sr.Clerk/Sr.Assistant/1st grade Assistant/equivalent other employees with same or identical scale of pay. Whereas, in the case of such employees, the sub-committee/executive committee is competent to impose penalties (d) to (h) [withholding of promotion, recovery from pay, reduction to lower rank, compulsory retirement, dismissal] on such officials. In the case of all other employees, the competent authority to impose penalties (a) to (c), is the Secretary/ Manager/other Chief Executive Officers and the President is the authority to impose penalties, as per penalties (d) to (h) on such employees. A statutory appellate remedy is conferred on the aggrieved

employees, as per Rule 198 (4). The tabular column, appended thereunder, deals with the designated appellate authority, to deal with the appeals of the various categories of employees mentioned therein. It appears that, in many cases, the Managing Committee [who is the appointing authority, as per Rule 182 (2)], used to impose the penalties, including the aforesaid major penalties. Going by the provisions contained in Rule 198(4), the Managing Committee/Board of Management, etc., happens to be the appellate authority as well. It is in this context that the Division Bench of this Court in ***Pudupariyaram's case*** supra [1996 (1) KLT 100 (DB)], has held, *inter alia,* in paras 9 & 10 thereof, that the said practice is illegal and *ultra vires*, inasmuch as a statutorily vested and accrued right of appeal will be obliterated and nullified, inasmuch as the appeal will have to be dealt with by the same authority (Managing Committee), which has imposed the penalty. Hence, the Division Bench ordered that, failure to constitute a sub-committee, as envisaged in Rule 198(3), to take the decision regarding penalties, is contrary to the provisions of the Rules, etc. So, in other words, the penalties are to be imposed by the designated authority concerned, which, in the case of penalties (d) to (h), for the first category of employees, is the sub-committee, etc. From the submissions of the respondent-State authorities, it is discernible that it is strictly to enforce these norms in Rule 198(3) and also not to obliterate the appellate

remedy under Rule 198(4), that the rule making authority has brought in the amendments to insert sub-rules (2A) & (2B) of Rule 198, as per S.R.O No.1005/2010, published in Kerala Gazette, Extraordinary, Vol. No.55, No.2427 dated 02.11.2010.

61. A comparative reading of the provisions of Rule 198, as it stood prior to 02.11.2010 and as it stood on or after 02.11.2010, would make it clear that sub-rules (2A) & (2B) have been inserted only for clarity and focus, for enforcing the pre-existing norms, particularly those contained in sub-rules (3) & (4) thereof, so that, penalties are to be imposed only by the designated authority concerned, so as to ensure that the appellate right under sub-rule (4) is made meaningful, and so as not to obliterate or nullify the appellate remedy. True that, the wordings in sub-rule (2A) & (2B), in regard to the sub-committee, is the disciplinary sub-committee, whereas the word "*sub-committee*", as it stood prior to the amendment, has been retained in sub-rule (3). But, a proper reading of the abovesaid Rules, in the light of the legislative intention for the aforesaid amendment and taking into account the legal principles laid down by the Division Bench of this Court in ***Pudupariyaram's case*** supra [1996 (1) KLT 100 (DB)], it is only to be held that the disciplinary sub-committee, envisaged in sub-rules (2A) & (2B), is the same as the sub-committee envisaged in sub-rule (3) thereof. So, in other words, it is very clear that

the statutory scheme, as it stood prior to the amendment, is retained even after the amendment. What has been effectuated by the said amendment, as per S.R.O No.1005/2010, published in the Gazette dated 02.11.2010, is only to ensure the proper and lawful enforcement of the pre-existing statutory scheme contained in sub-rules (3) & (4). So, we are of the view that sub-rules (2A) & (2B), inserted as per the amendment, have been made only to provide fine-tuned procedural norms for ensuring that the sub-committee, envisaged in sub-rule (3) is constituted by the co-operative societies concerned. The Division Bench, in para 13 of ***Pudupariyaram's case*** supra [1996 (1) KLT 100 (DB)], had declared the legal position that the failure of the co-operative societies, to constitute a sub-committee, envisaged in sub-rule (3), to take decision on the issue of penalty, is contrary to the statutory rules. Prior to the amendment, many of the co-operative societies were under the impression that there is no necessity to constitute such a sub-committee, even though it is mentioned in sub-rule (3) and many a time, the penalties, which could have been imposed only by the designated authority mentioned in sub-rule (3), were imposed by the Managing Committee/Board of Management, which is the appellate authority. This resulted in the obliteration of the appellate remedy, provided as per sub-rule (4), inasmuch as the penalty authority and the appellant authority happened to be same authority.

62. Sub-rule (2A) stipulates that the committee of a co-operative society is under the mandatory duty to constitute a disciplinary sub-committee for the abovesaid purpose, which is to consist of not more than three of its members, of whom one shall be designated as Chairman, but the President of the Committee of the society, shall not be a member of the disciplinary sub-committee. Further, sub-rule (2B) has also provided that the disciplinary sub-committee, so constituted, shall inquire into the charges against the employee, either by themselves or by engaging an external agency. So, the combined effect of sub-rule (2B) and sub-rule (3) is that, where the designated penalty authority is the disciplinary sub-committee, then the said sub-committee is empowered, not only to inquire into the charges either by themselves or by engaging an external agency, but thereafter, if penalty is found to be imposed, then the said disciplinary sub-committee is also authorised to impose the requisite penalties, as envisaged in sub-rule (3). So, the disciplinary sub-committee, envisaged in terms of sub-rules (2A), (2B) & (3), is competent to inquire into the charges, either by themselves or by engaging an external agency, and is also the penalty imposing authority in the category of cases mentioned in the tabular column appended under sub-rule (3). So, in such cases, the disciplinary sub-committee is not only the inquiry authority but also the penalty authority. Further, as mentioned earlier, going by the special

structure and scheme of the statutory provisions contained in Rule 198, the Managing Committee/Board of Management, though the appointing authority, is prohibited from adorning the role of a penalty authority, as it is the appellate committee. Therefore, the jurisdictional competence to impose penalties is only on the designated authorities mentioned in sub-rule (3), including the disciplinary sub-committee, subject to the categories of cases mentioned in sub-rule (3). Whereas, the Managing Committee (appointing authority), being the appellate authority, is prohibited from adorning the role of the original penalty authority. In this regard, it is also pertinent to note that the scheme for Government service, as enshrined in Article 311 of the Constitution of India, is that the major penalties of dismissal, removal, etc., is that, no person employed in civil capacities under the Union of the State, shall be dismissed or removed by an authority subordinate to the appointing authority.

63. Whereas, going by the statutory scheme and structure of Rule 198 and its various sub-rules, the Managing Committee, which is the appointing authority, cannot impose the penalties and it can only adorn the role of the appellate body and the power to impose the penalties is to be exercised only by the designated penalty authorities mentioned in sub-rule (3). Needless to say, in cases where the disciplinary sub-committee is the designated penalty authority, as per sub-rule (3), such members of the

disciplinary sub-committee, who would otherwise be a part of the Managing Committee, may not partake as members of the appellate authority, when it deals with appeals from such penalty orders under Rule 198(4).

64. We are fully in respectful concurrence with the considered views of the Division bench in para 5 of ***Kodanchery's case*** supra [2020 (4) KLT 129], that the word *"charge"* means any specific act/acts, omission/omissions alleged to have been committed by an employee and that whereas, the word "*charge sheet*", is the memorandum of charges, which carry the allegations of acts or omissions, alleged to have been committed by the delinquent. In other words, as observed in ***Kodanchery's case*** supra [2020 (4) KLT 129], the word "*charge sheet*" is one which carries the allegations of misconduct, misbehaviour, indiscipline, negligence, etc., which formulates in precise terms, regarding the allegations of misconduct, misbehaviour, indiscipline, negligence, etc. So in other words, the words "*charge"* and *"charge sheet/memo of charges*", cannot have identical connotations and meaning. The word "*charge*" is having wider scope and ambit. Whereas, the word "*memo of charges/charge sheet*", is much more narrower and is mainly used in the context of disciplinary proceedings of employees. In other words, the word "*charge*" can be taken as a genus. Whereas, the word "*charge sheet/memo*

of charges" can be taken as a species thereof. After dealing with the distinction in the meaning of the words "*charge*" and "*memo of charges*", the Division Bench, in ***Kodanchery's case*** supra [2020 (4) KLT 129], has thereafter straightaway proceeded on the premise, as if the general proposition of law is that the appointing authority alone can issue and frame memo of charges. In that regard, reliance is also placed on the aforecited decisions of the Apex Court in ***K.V.Jankiraman's case*** supra [(1991) 4 SCC 109] & ***Anil Kumar Sarkar's case*** supra [(2013) 4 SCC 161], etc. Those decisions have not laid down any general proposition of law, that in the context of employer-employee relationship, the general law is that the power to issue and frame memo of charges against a delinquent employee is vested solely with the appointing authority. Whereas, the aforecited decisions in ***K.V.Jankiraman's case*** supra [(1991) 4 SCC 109] & ***Anil Kumar Sarkar's case*** supra [(2013) 4 SCC 161], have dealt with the issue, as to when a disciplinary proceedings can be said to have commenced or can be said to be pending and it was held that the disciplinary proceedings can be said to be pending or is said to have commenced, only when the memo of charges is issued. Those decisions are not, in any manner, authority for the general proposition that the power to issue and frame memo of charges is solely and exclusively vested in the appointing authority.

65. Whereas, the decisions of the Apex Court, in cases as in ***Shardul Singh's case*** supra [(1970) 1 SCC 108 (paras 6 & 10)], ***P.V.Srinivasa Sastry's case*** supra [(1993) 1 SCC 419 (paras 4, 5 & 6)], ***Radha Krishna Moorthy's case*** supra [(1995) 1 SCC 332 (para 8)], ***Thavasiappan's case*** supra [(1996) 2 SCC 145 (para 8)], ***F.X.Fernando's case*** supra [(1994) 2 SCC 746 (para 16)], ***Jayasurian's case*** supra [(1997) 6 SCC 75 (para 7)], ***Chandrapal Singh's case*** supra [(2003) 4 SCC 670 (paras 7 & 8)], would clearly show that the Apex Court has taken the view that, in the absence of any specific prescriptions in the rules and norms, as to who can issue and frame the memo of charges, even an authority subordinate to the disciplinary authority, competent to issue the major penalty, etc., can issue the memo of charges. It has also been held by the Apex Court, in cases as in ***B.V.Gopinath's*** *case supra* [(2014) 1 SCC 351], ***Pramod Kumar's case*** *supra* [(2018) 17 SCC 677], etc., that where the Rules specifically provides that the memo of charges/charge sheet, is to be approved by a designated authority, then the disciplinary action will be vitiated, in case the said mandatory procedure of approval of the charge sheet is not obtained from such designated authority concerned. It has also been held that any superior authority, i.e., the authority superior to the delinquent and who is a controlling authority vested with some authority, can issue

memo of charges, so as to set in motion the disciplinary action. Where, provisions in Article 311 of the Constitution of India come into play, then no such person employed in civil capacities can be imposed with punishment of major penalties of dismissal or removal, etc., by an authority, who is subordinate to the appointing authority. In the instant case, the protection in Article 311 is not available to the employees of the co-operative societies. There are no provisions, either in the Kerala Co-operative Societies Act or in the Kerala Co-operative Societies Rules, which prescribe, with specific clarity, as to who can frame and issue the memo of charges. Hence, the approach made by the Division Bench in ***Kodanchery's case*** supra [2020 (4) KLT 129], as if the appointing authority (Managing Committee) of the co-operative society, is the sole and exclusive authority to frame and issue memo of charges, does not reflect the correct legal position.

66. A reading of Rule 198 and its various sub-rules would clearly show that the rule making authority has not explicitly stated anywhere in those rules, as to who can issue the memo of charges to a delinquent employee and this is clear from a reading of Rule 198, especially Rule 198(2) as well as Rule 198 (2B). In that regard, it is relevant to note that the expression, "*appointing authority*" finds a place in Rule 198 only in sub rule (6) thereof, which deals with suspension of employees and in no other

sub rules, especially in those provisions which deal with disciplinary proceedings. That is a clear indication that the rule making authority has not intended that the appointing authority shall be the sole and exclusive authority to frame and issue memo of charges to the delinquents.

67. Further, the Division Bench, in para 5 of ***Kodanchery's case*** supra [2020 (4) KLT 129], has also proceeded on the premise, as if the disciplinary sub-committee is not a standing sub-committee and is to be constituted on a case to case basis, when actual cases of misconduct arise. In other words, the approach made in ***Kodanchery's case*** supra [2020 (4) KLT 129] is that the disciplinary sub-committee, envisaged in terms of sub-rule (2A), is to be constituted only as and when individual cases of misconduct are disclosed and that it can never be a standing sub-committee.

68. Sub-rule (2A) reads as follows :

> *"The committee of a society shall constitute a disciplinary sub-committee consisting of not more than three of its members, of whom one shall be designated as Chairman, but the President of the committee of the society shall not be a member in the disciplinary sub-committee"*

69. The wordings of the various sub-rules in Rule 198, including sub-rule (2A) thereof, does not in any manner necessarily lead to the conclusion, as if the disciplinary sub-committee is to be constituted only on a case to case basis and as and when individual cases of misconduct or

delinquencies are disclosed. On the other hand, a reading of the decision of the Division Bench in ***Pudupariyaram's case*** *supra* [1996 (1) KLT 100 (DB)], more particularly paras 9, 10 & 13, would make it clear that the Division Bench has unequivocally declared that failure to constitute a sub-committee to take decision on issues of penalty is in plain violation of the statutory mandate contained in the said Rule.

70. The learned Addl.Advocate General, appearing for the respondent - state authorities, has also submitted that such an interpretation, as if the disciplinary sub-committee is to be constituted, only on a case to case basis, etc., is not correct and that to effectuate the statutory mandate, it may be only in the fitness of things that immediately after an elected managing committee assumes office, then they may also constitute a disciplinary sub-committee, in compliance with sub-rule (2A), so that it functions as a standing body, which could ordinarily be co-terminus with the term of the elected committee. It has also been submitted, on behalf of the respondent-State, that it does not mean that a disciplinary sub-committee once constituted, cannot be re-constituted during the term of the elected Managing Committee and that, for appropriate and good reasons, the elected committee, if it thinks fit and proper, can change the composition of the disciplinary sub-committee and that, ordinarily, it is expected to function as a standing sub-committee, so

that there is an effective and efficient body to deal with cases of delinquencies and misconducts. We are in full agreement with the abovesaid submissions made on behalf of the respondent-State. Even dehors the abovesaid submission, we are of the view that the legislative mandate will be fully and properly effectuated, if, after assumption of power by the elected managing committee, they constitute a disciplinary sub-committee, in terms of sub-rule (2A), immediately after they assume office, so that there is a standing body, which could effectively and efficiently deal with cases of allegations of misconduct, etc. Of course, the elected committee would be at liberty to change the composition of the sub-committee, if it thinks fit and proper and ordinarily, the disciplinary sub-committee could be conceived as a standing body, which would function co-terminus with the term of the elected committee. But, that does not mean that if the disciplinary sub-committee has been constituted only on a case to case basis, that by itself would invalidate the decision making process of that body in disciplinary proceedings. All what we are holding is that the premise relied on by the Division Bench in ***Kodanchery's case*** supra [2020 (4) KLT 129] as well as in para 12 of ***Kochurani's case*** supra [2020 (6) KLT Online 1035], as if the disciplinary sub-committee is to be constituted only on a case to case basis, as if it can never be a standing body, does not reflect the correct legal

perspective. One of the main reasoning adopted by the Division Bench ***Kodanchery's case*** supra [2020 (4) KLT 129], to hold that the disciplinary sub-committee can never be said to have the power to frame charges, is that the said body will come into being, only after a serious case of misconduct is revealed and the managing committee thereafter initiates the disciplinary action, etc.

71. Very crucially, it has to be borne in mind that there is substantial difference in the scope and ambit of the expressions *"charge"* and "*memo of charge*". Rule 198 (2B) uses the expression "*charges*". Rule 198 (6), which deals with suspension, also uses the expression "*charges*". This Court in the decision in ***Coir Mats Society's case*** supra [1998 (1) KLT 570, para 4], has clearly held that the word "charges" appearing in Rule 198 (6), is not confined only to memo of charges or charge sheet and that, if there are some materials with the authority concerned, which *prima facie* discloses allegations of misconduct and irregularities, etc., then the power under Rule 198 (6), to suspend an employee from service, would be invoked, even if, at that time, memo of charges has not been framed and issued to the delinquent employee. Similar view has also been rendered by this Court, in para 5 of the decision in ***Madhavan Nair's case*** supra [1963 KLT 480 = 1963 KHC 129], while dealing with the scope and ambit of Rule 16 of the rules framed under the Hindu Religious

Endowments Act, 1926, which empowered suspension from service, pending enquiry into the grave charges. Therein, this Court held that the word "*charges*", appearing in Rule 16 supra, can only mean accusations and cannot be confined only to scenario of issuance of formal charge memo, etc.

72. In that regard, it has to be borne in mind that, whenever the rule making authority has intended that the proceedings mentioned in the Rule is one in relation to the stage after the issuance of the memo of charges, then it has provided clear and unambiguous guidance in that regard. For instance, in Rule 198(7) of the KCS Rules, it is stipulated that no retirement benefits need be sanctioned to an employee or to a retired employee, in the event of any pendency of disciplinary proceedings against the said employee, pursuant to any charge of grave misconduct, irregularity or corruption, etc. Rule 198 (7) reads as follows:-

> "***Rule 198.(7)*** *In the event of any pendancy of disciplinary proceedings against any employee of a co-operative society or any co-operative institution pursuant to any charge of grave misconduct, irregularity, corruption or other charge involving moral turpitude, no retirement benefits shall be sanctioned to such employee or retired employee and in case of sanctioning of any retirement benefits to any such employee or retired employee, the name and designation of the sanctioning authority together with the reason for such sanctioning shall be recorded by the sanctioning authority by himself and such authority shall be held responsible for any loss to the society owing to such sanctioning of retirement benefits if found that such sanctioning was unwarranted."*

73. Sub-Rule 7 of Rule 198 uses both the expressions "*pendency of disciplinary proceedings*" as well as "*charge of grave misconduct,"* etc.

The power to withhold retirement benefits, as envisaged in that sub-Rule, can be invoked only in the event of any pendency of any disciplinary proceedings against the employee, in pursuance of any charge of grave misconduct, etc. So, it can be seen that, in that scenario, the said sub-Rule (7) has clearly mandated that the jurisdictional facts required are not merely charge of misconduct but also pendency of disciplinary proceedings. It is well settled that disciplinary proceedings can be said to be commenced only on issuance of the memo of charges. So, to invoke the said sub-Rule, the Rule making authority has made it clear that, retirement benefits can be withheld, in the case of an employee or a retired employee, only in the case of pendency of any disciplinary proceedings, in pursuance of any charge of misconduct. In other words, there should not only be charges of grave misconduct, i.e., allegations of grave misconduct, in the generic sense but also a memo of charges should have been issued, on or before the date of retirement of the employee concerned. Only then, the disciplinary proceedings could have been said to be pending, as understood in that Rules. This aspect of the matter has been dealt with in detail in decisions of the Division Bench of this Court in ***Mohanan Nair*** *v.* ***Omallur Service Co-operative Bank Ltd.*** [2022 (3) KLT Online 1055 = ILR 2022 (2) Ker. 1123] & ***Yadava*** *v.* ***Kerala State Co-operative Bank Ltd.*** [2022 (5) KLT 630 (DB)]. In contradiction to the expressions

used in Sub-Rule (7), Sub-Rule (6) and Sub-Rule (2B) uses only the expression “charges” and expressions like ‘pendency of disciplinary proceedings’ or ‘issuance of memo of charges/charge sheet’ are conspicuously absent. In other words, expressions like ‘pendency of disciplinary proceedings’ are conspicuously absent in both Sub-Rule (2B) and Sub-Rule (6) of Rule 198.

74. Further, Sri.P.N.Mohanan, learned counsel appearing for the delinquent employees in some of the cases has also apprised us that the Malayalam version of Rule 198(2B), as follows:-

"അങ്ങനെ രൂപീകരിക്കപ്പെട്ട അച്ചടക്ക ഉപസമിതി ജീവനക്കാരനെതിരെ ഉള്ള കുറ്റാരോപണങ്ങൾ ഒന്നുകിൽ സ്വയമേയോ അല്ലെങ്കിൽ ഒരു ബാഹ്യ ഏജൻസിയെയോ ഏർപ്പെടുത്തി അന്വേഷിക്കണം."

75. Rule 198 (2B) as in the Statute Book provides as follows:-

“Rule 198 (2B) The disciplinary sub-committee so constituted shall inquire into the charges against the employee either by themselves or by engaging an external agency.”

76. We are told that the Government/Rule making authority has not published any official Malayalam translated version of the KCS Rules.

77. Sri.P.N. Mohanan, learned Advocate, is a renowned Editor and author of published books relating to the Kerala Co-operative Societies Act and the Kerala Co-operative Societies Rules. Hence, we have carefully perused through the Malayalam version, as given by him. Even going by the said version, it can be seen that, the expression used is

"കുറ്റാരോപണങ്ങൾ", i.e., allegations of misconduct.

78. Therefore, both the said Malayalam version as well as the original English version, as in the Statute Book, uses the general expression "*charges*" and not "*memo of charges*", which means charges of misconduct or allegations of misconduct. According to us, that would be in the realm of the genus of allegations of misconduct and not merely a species thereof, in relation to memo of charges or charge sheet, as understood in the perspective of disciplinary proceedings.

79. Further, it has been held by the Apex Court in decisions as in para 9 of ***H.C.Khurana's case*** supra [(1993) 3 SCC 196] and para 18 of ***Gandhi's case*** supra [(2013) 5 SCC 111] that, framing of charge sheet is the first step to be taken for holding the enquiry into the allegations on the decisions taken to initiate the disciplinary proceedings. True that, the Apex Court has also held that there was a distinction between the stages of "initiation of disciplinary proceedings" and "commencement of disciplinary proceedings", as can be seen from a reading of the decisions as in ***B.V.Gopinath's*** case supra [(2014) 1 SCC 351] and ***Pramod Kumar's case*** supra [(2018) 17 SCC 677]. The Apex Court has also held in ***H.C.Khurana's case*** supra [(1993) 3 SCC 196], that the issuance of charge sheet/memo of charges on the employees

follows the decision to initiate the disciplinary proceedings and it does not precede or coincide with that decision. However, the crucial aspect of the matter is that, as held by the Apex Court in ***H.C.Khurana's case*** supra [(1993) 3 SCC 196], ***Gandhi's case*** supra [(2013) 5 SCC 111], etc., that "framing of the charge sheet, is the first step taken for holding the enquiry into the allegations on the decision taken to initiate disciplinary proceedings." Ordinarily, when there are materials which, *prima facie,* show cases of misconduct, irregularities, negligence, etc., on the part of employees of co-operative societies, the managing committee could refer the matter to the disciplinary sub-committee. Once the disciplinary sub-committee is convinced that there are materials, which discloses cases of misconduct, delinquency, etc., then those materials, disclosing the allegations, could be considered as "*charges*", as envisaged in Rule 198(2B), especially when understood in the context of the abovesaid legal position settled in various case laws cited hereinabove.

80. We have already held that there is a substantial distinction in the scope and ambit of the expressions "*charges*" *vis-a-vis* "*memo of charges/charge sheet*" and that the former could be taken as a genus and the latter could be taken as a species of the former. When the matters reach that stage, then the disciplinary sub-committee is confronted with the "*charges*", as understood in the general sense and if it is convinced that the

matter should be proceeded further, then framing of the charge sheet is the first step to be taken for holding the enquiry into the allegations. It has also to be borne in mind that the appointing authority (Managing Committee), is prohibited from adorning the role of a penalty imposing authority, for the abovesaid reasons. Hence, in the light of these aspects, to trigger the first step, the disciplinary sub-committee will also have the power to issue the formal memo of charges/charge sheet to the delinquent employee, taking note of the overall charges disclosed from the materials dealing with allegations of misconduct, delinquency, etc.

81. Further, it has to be borne in mind that the memo of charges/charge sheet issued to a delinquent, is only for the purpose of advancing the elementary or rudimentary principles of natural justice and fairness. The delinquent should be specifically and precisely told and apprised, as to what are the specific acts of misconduct or allegations that he has to defend in the disciplinary enquiry proceedings. So, in the light of these aspects, we are of the considered view that the disciplinary sub-committee will also have the power to frame and issue the memo of charges to the delinquent employee and then proceed with the other steps in the disciplinary enquiry proceedings, whereby they may either conduct the enquiry themselves or can entrust that responsibility to an enquiry officer.

82. The matter can be viewed from another perspective as well.

Sri.P.N.Mohanan, learned counsel appearing for the employees concerned in some of the aforesaid cases placed reliance on the provisions contained in Rule 198(2) and has argued, by citing the decision of the Apex Court in ***Surath Chandra Chakrabarty's case*** supra [(1970) 3 SCC 548], that, the formal memo of charges/charge sheet can be issued only by the Managing Committee (appointing authority) and that the view taken by the Division Bench in ***Kodanchery's case*** supra [2020 (4) KLT 129] that the managing committee/appointing authority is the sole authority to issue memo of charges, is fully correct. It is true that there is a broad similarity between the provisions contained in Rule 55 of the then C.C.A Rules, considered by the Apex Court in para 5 of ***Surath Chandra Chakrabarty's case*** supra [(1970) 3 SCC 548], in comparison to Rule 198(2) of the KCS Rules. It is stated in para 5 of ***Surath Chandra Chakrabarty's case*** supra [(1970) 3 SCC 548] that the abovesaid Rule 55 considered therein, provided, *inter alia,* that, "without prejudice to the provisions of the Public Servants Enquiry Act, no order of dismissal, removal or reduction, shall be passed on a member of the service, unless he is informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself". The grounds on which it is proposed to take action, is to be reduced to the form of definite charge or charges, which have to be communicated to the person

charged together with the statement of allegations, on which each charge is based and any other circumstances, which it is proposed to be taken into consideration in passing the orders, are also to be stated, etc. Whereas, Rule 198(2) of the KCS Rules,provides that "*no kind of punishment shall be awarded to an employee unless he has been informed in writing, on the grounds on which it is proposed to take action and he has been afforded an opportunity, including personal hearing to defend himself. Every order awarding punishment shall be communicated to the employee concerned in writing, stating the grounds on which the punishment has been awarded*." Even though the abovesaid two different rules are not identical, there is a broad similarity in the wordings of the initial part of Rule 55, cited in ***Surath Chandra Chakrabarty's case*** supra [(1970) 3 SCC 548], *vis-a-vis* the first part of Rule 198(2) of the KCS Rules. The Apex Court in ***Surath Chandra Chakrabarty's case*** supra [(1970) 3 SCC 548], held that in view of the abovesaid provisions contained in Rule 55 of those Rules, the said rule embodies a principle, which is one of the basic contents of reasonable or adequate opportunity for defending oneself and that if the delinquent is not told clearly and definitely, as to what are the allegations on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances, that may be in the contemplation of the

authorities to be established against him. In other words, the Apex Court held that the abovesaid provisions of Rule 55 considered therein, will lead to the position that the memo of charges should be precise and fully clear, so that the delinquent can know the material particulars on the basis of which he has to defend his case and also to know, as to what exactly are the precise allegations that he has to meet, in the course of the disciplinary enquiry proceedings.

83. The admonition flowing out from Rule 55 of the aforesaid rules as well as Rule 198(2) of the KCS Rules, is directed against the authority, who is competent to impose the penalty concerned. In our case, the appointing authority (managing committee) is prohibited from imposing any penalty, for the abovesaid reasons, in view of the statutory scheme and structure of Rule 198(2) of the KCS Rules. Therefore, the admonition in Rule 198(2), to be understood is that the authority concerned could issue and frame precise and unambiguous memo of charges, then the said admonition or obligation is on the authority competent to impose the penalty concerned. Therefore, the said admonition, flowing out from Rule 198(2) of the KCS Rules, cannot be said to be addressed to the managing committee (appointing authority), in the case of co-operative societies employees, covered by Rule 198, as the said appointing authority is prohibited from imposing any of the penalties, as it has to fulfill the role of

an effective and fair appellate authority. So, the abovesaid plea taken on behalf of the employers in these cases, is not tenable. On the other hand, on viewing the admonition in Rule 198(2) of the KCS Rules, in the light of the dictum laid down in para 5 of the Apex Court decision in ***Surath Chandra Chakrabarty's case*** supra [(1970) 3 SCC 548], it can be easily seen that the authority competent to impose the penalty is also having the power to issue the memo of charges. In other words, even the disciplinary sub-committee is also having the power to frame and issue the memo of charges. It is also to be borne in mind that the consistent view, rendered by the Apex Court in the aforecited decisions, as in ***P.V.Srinivasa Sastry's case*** supra [(1993) 1 SCC 419], is that as per the general law, so long as the rules are silent, as to who can issue the memo of charges, then even an authority subordinate to the disciplinary authority/appointing authority can issue the memo of charges to the delinquent employee. The decisions of the Apex Court, in cases as in ***B.V.Gopinath's*** case supra [(2014) 1 SCC 351], ***Pramod Kumar's case*** supra [(2018) 17 SCC 677] deals with the exceptional scenario, whereby if the Rules explicitly and clearly mandate that the memo of charges/charge sheet, is to be approved by a designated authority, then issuance of a charge sheet, without such approval of the designated authority, would invalidate the disciplinary action. In the present case, Rule 198 does not

provide any explicit provision, as to which are the authorities who can frame and issue the memo of charges to the delinquent employee. Moreover, the general law is also to the effect that if the rules are silent, then any superior authority, that is an authority superior to the delinquent, but who can be seen as a controlling authority vested with some authority, can also issue the memo of charges. Moreover, it can be seen from a reading of the various provisions in the CCS (CCA) Rules, more particularly Rule (2)(t), Rule (12), Rule (14) etc., thereof and the provisions of the KCS (CCA) Rules, more particularly, Rule 13 & Rule 15 thereof, that, even in those Rules, the disciplinary authorities competent to impose the penalites concerned, need not, necessarily be the appointing authority, but in those Rules, care has been made to ensure that, since Government service personnel are entitled for the protection of 311, the disciplinary authorities, competent to impose major penalty, like dismissal/removal, etc., are not authorities, who are subordinate to the appointing authority. So also, Rule 14(3) of the CCS (CCA) Rules empowers such a disciplinary authority, which need not be the appointing authority, to frame and issue memo of charges to the delinquents. Rule 15(2) of the KCS (CCA) Rules empowers the disciplinary authority, which is not an appointing authority, to issue memo of charges to the delinquents. So, it can be seen that, even in Rules framed to regulate the conditions of services of Government personnel,

who are even entitled for protection of Article 311, the disciplinary authority could be different from the appointing authority and such disciplinary authority, which has been empowered to issue memo of charges, etc. So, it is not as if the general law is that the appointing authority alone has the jurisdictional competence to issue memo of charges. These aspects are discernible not only from the case laws mentioned herein above, but also by virtue of the afore illustrative provisions in the aforesaid CCA Rules. Whether the disciplinary sub-committee has the jurisdictional competence to even initiate disciplinary proceedings, is a matter that we are not examining now. Ordinarily, it is expected that when a serious case of delinquency is made out, the Managing Committee may refer the matter, with the requisite materials, to the disciplinary sub-committee for its consideration. Even in a case where the matter is referred by the Managing Committee to the disciplinary Sub-committee without adequate materials, the disciplinary sub-committee will have the incidental and ancillary powers to collect some materials, to form an opinion, to enable it to decide as to whether the matter should be seriously proceeded as to whether memo of charges is to be issued or not. In other words, the issue as to whether the Disciplinary sub-committee also has the power to initiate disciplinary proceedings, apart from commencing disciplinary proceedings, is not very relevant to the present reference issue

and hence, we are not inclined to deal with the same.

84. In the light of all the above aspects, it is to be held that the view taken by the Division Bench in ***Kodanchery's case*** supra [2020 (4) KLT 129], as if the appointing authority (Managing Committee) is the sole and exclusive authority for framing and issuing memo of charges to the delinquent employees, covered by Rule 198 of the KCS Rules, does not reflect the correct legal position.

85. **Other incidental issues**:

(A)(i) Sri.A.L.Navaneeth Krishnan, learned counsel appearing for the co-operative society employees in some of these cases, has submitted that Rule 198(2) will operate only at the stage of submission of the enquiry report and it deals with the necessity for giving reasonable opportunity to the delinquent, after the submission of the enquiry report, in cases where disciplinary and enquiry authorities are two different functionaries, as envisaged in the Constitution Bench decision of the Apex Court in ***Managing Director (MD), Electronic Corporation of India Ltd. (ECIL), Hyderabad & Ors.*** *v.* ***B. Karunakar & Ors.*** [(1993) 4 SCC 727]. He would further contend that Rule 198(2) can never operate at the stage of issuance of memo of charges, etc.

(ii) We need not get into the nitty-gritty of those aspects. This we say so, as, even if, we proceed on the premise that the first part of Rule

198(2) is operating in the stage prior to and at the time of issuance of the memo of charge, we have already held that the disciplinary sub committee will also have the jurisdiction to issue the memo of charges, for the reasons stated supra. Further, Rule 198(2) can operate even not only at the stage of issuance of memo of charges but also at the stage after the submission of the enquiry report and just before the stage of the decision as to whether penalty is to be imposed and if so, what shall be the penalty, etc.

(iii) It is by now well established, by the decision of the Constitution Bench of the Apex Court in ***B. Karunakar's case supra*** [(1993) 4 SCC 727], that where the enquiry authority and the disciplinary authority are two distinct functionaries, then, even if the delinquent has been afforded reasonable opportunity by the enquiry authority, but still after the enquiry report, since the decision as to whether the delinquent is found to be guilty or not, on the basis of the enquiry report, is to be taken by the disciplinary authority, the said authority will also have the obligation to grant reasonable opportunity to the delinquent on the issues of guilt. Hence, Rule 198(2) could also operate subsequently at the stage after the submission of the enquiry report by the enquiry officer appointed by the disciplinary authority and before the disciplinary authority takes a decision as to whether the delinquent is guilty of the allegations of memo of charges, based on the enquiry report. In the light of these aspects, the view taken by

the Division Bench, in para 12 of ***Kochurani***'s case supra, as if the disciplinary sub committee is to be actually constituted only if the explanation of the delinquent to the memo of charges is not satisfactory, also will not reflect the correct legal position.

(iv) Further, Sri.P.N.Mohanan, learned counsel appearing for the employees in some of these cases, has also urged that if it is held that the disciplinary sub committee has the jurisdiction to issue memo of charges, then it would lead to a real and substantial case of reasonable likelihood of bias or even actual bias, inasmuch as in cases where the disciplinary sub committee is the penalty authority.

(v) After due consideration, we are afraid that we are not in a position to countenance the abovesaid plea of the afore learned counsel.

(vi) If that be so, the same argument can be pressed into service even against the Managing Committee (appointing authority) and it would be argued that if the Managing Committee (appointing authority) can issue memo of charges, then it would lead to bias by the said authority in its role as appellate body.

(vii) It is elementary that memo of charges/charge sheet are issued only for the purpose of advancing the rudimentary principles of natural justice and fairness. The delinquent/accused employee should be told in clear, specific and unambiguous terms as to what are the allegations that

he has to meet in the course of the enquiry proceedings.

(viii) Even in a criminal trial, the power to frame charges is solely vested with the criminal court and not to the prosecution agency. The role of the prosecution agency is to prosecute the case, after submission of the final report/charge sheet. If the abovesaid argument of the counsel is accepted, then it could even be argued that a criminal court, which is to adjudicate on the trial, will be biased, if it is given the power to frame charges. Framing of charges by the criminal court or by a competent authority in disciplinary proceedings is only to specifically apprise the accused/delinquent, in clear and unambiguous terms, as to what are the allegations that he has to meet, in the course of that proceedings. If the charges are vague, ambiguous and without material particulars, then, it would be in violation of the rudimentary principles of natural justice. So, when the role of the competent authority to frame charges is for advancing the principles of natural justice and the proceedings is to be conducted by the said authority, the plea that the said authority would be biased in conducting the proceedings, merely because it has framed the memo of charges, is completely misconceived.

(B)(i) Sri.P.K.Ravishankar, learned counsel appearing for the respondent employee in W.A.No.1041/2022 has submitted that the facts of that case is solely different from the other appeals and that, in the instant

case the delinquent employee was holding the post of Junior Clerk, which does not come within the first category of employees covered by the tabular column appended to Rule 198(3) and it comes within the second category of post called "other employees" and hence the disciplinary authority competent to impose the major penalty, like dismissal from service, is the president of the society and not the disciplinary sub committee. Whereas, in the instant case, the memo of charges have been issued to him by the disciplinary sub committee and not by the president. That, the disciplinary sub committee may be competent to issue memo of charges, in cases where it is the competent disciplinary authority for imposing punishment. But, in the instant case, the disciplinary authority of the respondent employee is the President, who alone is competent to impose the major penalty of dismissal and therefore, the impugned action on the part of the disciplinary sub committee to have issued the memo of charges to the respondent employee is illegal and *ultra vires* and without jurisdiction. This submission is totally contested by Sri.M.Sasindran, learned counsel appearing for the appellant co-operative society/employer.

(ii) It is to be noted, as mentioned hereinabove, that the KCS Rules are silent as to which is the authority competent to issue memo of charges/charge sheet. Therefore, going by the general law, even an authority subordinate to the disciplinary authority can issue memo of

charges.

(iii) Further, it has also been held that, in such cases, where the Rules are silent and not explicit in that regard, then any superior authority, namely authority which is superior to the delinquent but which can be seen as a controlling authority vested with some power or authority, can also issue memo of charges. In the instant case, taking a broad view, it can be appreciated that the disciplinary sub committee could be treated as higher to the President, going by the hierarchy of disciplinary authorities mentioned in Rule 198(3). Moreover, the disciplinary sub committee in such cases will get the competence to issue Memo of Charges, as in the process of "*inquiring into the charges*", the first step is to issue Memo of Charges as envisaged in ***H.C.Khurana's case*** supra [(1993) 3 SCC 196] and ***Gandhi's case*** supra [(2013) 5 SCC 111]

(iv) The general law is that where the Rules are silent, then even an authority subordinate to the disciplinary authority could issue memo of charges. So, we are not in a position to hold that the disciplinary sub committee is completely denuded of any power to issue even a memo of charges to a lower level employee, like the respondent employee herein. Further, the exceptional scenarios covered in the decisions of the Apex Court, in cases as in ***B.V.Gopinath's case*** supra and ***Pramod Kumar's case*** supra, does not arise in the instant case.

(v) Hence, we are of the view that, in the light of the abovesaid aspects, the disciplinary sub committee can also issue memo of charges to a lower level employee covered by the second category of employees, mentioned in Rule 198(3), in whose case the penalty authority is the President.

(C) Another issue raised by Sri.P.C.Sasidharan, the learned counsel appearing for the appellant in W.A. No.757/2023 is that the employer in question in the abovesaid case is the Kerala State Co-operative Bank and hence, certain specific rules are applicable to their functioning. However, we are not inclined to go into those matters, as they are not relevant to the referred issue herein.

(D)(i) Yet another incidental issue that we may have to address is as to whether the Managing Committee (appointing authority) has the jurisdictional competence to issue memo of charges, to employees covered by Rule 198. Some of the advocates appearing for the co-operative society employees as well as the Additional Advocate General, representing the State, had submitted that the said incidental issue may also be addressed by this Court. We are inclined to get into this issue, as it is necessary. This we say so, as in the decision rendered by the Division Bench on 13.1.2020 in Kodanchery's case supra, it was held that the appointing authority is the sole and exclusive authority having jurisdictional competence to issue

memo of charges to employees covered by Rule 198. Now that we are inclined to overrule the said legal position, it is only in the interest of justice that we address this issue, as many of the co-operative societies have followed the abovesaid dictum as if the Managing Committee (appointing authority) is the sole and exclusive authority in the matter of issue of charge memo.

(ii) True, that the admonition and obligation, addressed in Rule 198(2), may be directed as against the disciplinary authority competent to impose the penalty. But the Rules are silent and not explicit as to which are the authorities who can issue memo of charges.

(iii) When the general law is that, in the absence of explicit provisions in the Rules, even an authority subordinate to the disciplinary authority can issue memo of charges and any authority superior to the delinquent and who can be seen as a controlling authority, vested with some colour of authority, can also issue memo of charges and when the Managing Committee is the appointing authority of the employees of the co-operative societies, it does not stand to reason to hold that the Managing Committee (appointing authority) has no jurisdictional competence at all to issue memo of charges.

(iv) It has also to be borne in mind that the function of issuance of memo of charges is mainly to comply with the requirements of natural

justice, in order to notify the delinquent as to the specific nature of the allegations that he has to meet.

(v) There are no explicit or implicit provisions in the Rules, disabling the Managing Committee (which is the appointing authority) to issue memo of charges to delinquents. Merely because the Managing Committee (appointing authority) is also the appellate body, it cannot be said that the Managing Committee will be biased in its role as the appellate body, if the Managing Committee can also issue the memo of charges.

(vi) We have already referred to the scenario of criminal trials, where the criminal court is solely empowered to frame charges, and merely because the court is framing the charges, it does not mean that the Court would be biased in the conduct of the trial adjudication.

(vii) So, in the light of these aspects, we are of the considered view that the Managing Committee/Board of Management (appointing authority) also has the jurisdictional competence to frame/issue memo of charges to delinquents, eventhough the said body is also to carry out the appellate functions.

(E)(i) Yet another issue would be as to whether the President has competence to issue memo of charges, in cases where the disciplinary authority/penalty authority is the disciplinary sub-committee, in the case of higher level officials, covered by the first category of employees,

mentioned in the tabular column appended to Rule 198(3).

(ii) *Prima facie*, it may appear that, in the absence of explicit provisions in the Rules, any authority, who is subordinate to the disciplinary authority, can also issue memo of charges. So also, any authority, which is superior to the delinquent and who is vested with some authority of power can also issue memo of charges. So, *prima facie*, it appears that the President may also have the jurisdictional competence to issue memo of charges, in the case of employees covered by the first category, supra, whose penalty authority is the disciplinary sub-committee. However, since none of the cases before us discloses the factual scenario of that nature, it is not necessary for us to render any final opinion on that issue.

(iii) We make it clear that the said issue may be decided in appropriate cases, where the said factual issue arises, by the Single Bench or the Division Bench concerned, in accordance with law and in the light of the legal principles mentioned hereinabove.

(F) Further, the Registrar of Co-0perative Society and the other notified Registrars, in respect of other categories of Co-operative Societies, after getting advice from the learned Advocate General/Additional Advocate General, may issue necessary circular, instructing the Co-operative societies concerned, that the disciplinary sub committee,

envisaged under Rule 198(2A), is ordinarily to be constituted as a standing body, immediately after the elected management committee gets into the power and its term could ordinarily be coterminus with the term of the elected committee and that this will not preclude the elected committee to change the constitution of the disciplinary sub-committee, before the expiry of the term of the Managing Committee, if it thinks fit and proper and that, this may be done by the Co-operative Societies to ensure the effective and sufficient function of the disciplinary sub-committees, to deal with cases of misconducts and delinquencies of employees and co-operative societies.

(G) Now that, we have overruled the legal position earlier settled by the Division Bench in ***Kodanchery's case*** supra [2020 (4) KLT 129], it may be pertinent to make a few observations. It is trite that when constitutional courts, like the High Courts and the Apex Court, makes declaration of a new legal position or overrules a settled legal position and lays down a new legal position, etc., then the declaration of law will ordinarily affect not only new cases that arise on or after the date of declaration by the Court in the said judgment, but will also affect all cases pending as on that day. However, it is also trite that the Apex Court alone is empowered to invoke the doctrine of prospective overruling in such scenarios [see ***C. Golak Nath & Ors. v. State of Punjab & Anr.***,

(1967) 2 SCR 762 = AIR 1967 SC 1643] and the said power of prospective overruling is not vested with the High Courts. But, at the same time, it is also well-settled that when High Courts make new declaration of the legal position, as in the instant case, then no doubt, it will affect not only new cases arising on or after the date of this decision, but will also affect cases pending as on that day. However, past cases, already settled and finalized by adjudication, etc., will not be affected, in view of the issues of *res judicata* and constructive *res judicata*. So also, past cases barred by delay, laches, time bar, estoppel, acquiescence, etc., also cannot be re-opened, by virtue of the new declaration of law in the judgment, as above.

SUMMING UP:

86. The upshot of the above discussion may be summed up as follows:

(i) The view rendered by the Division Bench of this Court in ***Kodanchery's case*** supra [2020(4) KLT 129 (DB)], more particularly paragraph No.5 thereof, to the effect that the Appointing Authority (Managing Committee) is the sole exclusive authority to issue memo of charges to the delinquent employees covered by Rule 198 of the KCS Rules, does not reflect the correct legal position and to that extent, the said position will stand overruled.

(ii) Disciplinary sub-committee, as per sub rules (2A) & (2B) is the same as the sub-committee referred to in sub rule (3) of Rule 198. Disciplinary sub-committee, envisaged in terms of Sub-Rule (2A)

of Rule 198 of the KCS Rules, which is designated as the penalty authority, in terms of the tabular column appended under Rule 198(3), will also have the jurisdictional competence to issue memo of charges to delinquent employees, in the process of carrying out its duties and responsibilities of inquiring into the charges, as envisaged in Sub-Rule (2B) of Rule 198.

(iii) The Managing Committee (appointing authority) of a co-operative Society also will have the jurisdictional competence to issue memo of charges, in cases covered under Rule 198. The Disciplinary sub-committee will also have the jurisdiction to issue memo of charges, even in cases of employees covered by the second category mentioned in Rule 198 (3) for whom, the penalty authority is the President.

(iv) Final opinion on the issue, as to whether the President of a co-operative society has the jurisdictional competence to issue memo of charges to employees ,who come within the first category of employees, appended under Rule 198(3), for whom the penalty authority is the disciplinary sub-committee, is left open to be raised and decided in appropriate cases.

(v) For the aforesaid reasons, it is also held that the legal position, settled by the Division Bench in paragraph No.12 in ***Kochurani Jose***'s case supra [2020 (6) KLT Online 1035=ILR 2021(1) Ker. 589], as if the disciplinary sub-committee is to be constituted only on a case-to-case basis and that the disciplinary sub-committee is to be constituted in terms of Rule 198(2A) only after the Managing Committee finds that the explanation of the memo of charges given by the delinquent is unsatisfactory, etc., also does not reflect the correct legal position and the said position, to that extent, will

stand over-ruled. As the other issues in the afore cited ***Kochurani Jose***'s case supra are not relevant to the point of reference, we need not get into those issues.

(vi) As already mentioned hereinabove, the Apex Court alone is empowered to invoke the doctrine of prospective overruling [see ***Golak Nath's*** *case supra***,** (1967) 2 SCR 762 = AIR 1967 SC 1643], and the said power of prospective overruling is not vested with the High Courts. Hence, it is clarified that the legal position settled in the instant cases, shall affect both new cases arising on or after the date of this decision as well as cases pending as on this day. However, past cases, which have already been settled and finalized by adjudication, in view of the issues of *res judicata* and constructive *res judicata* cannot be reopened on the basis of this. So also, past cases barred by delay, laches, time bar, estoppel, acquiescence, etc., also cannot be re-opened, by virtue of the new declaration of law in this decision.

(vii) The Registrar of Co-operative Societies and other Notified Registrars of other categories of Co-operative Society will issue circulars instructing the co-operative societies to ensure that immediately after the elected managing committee takes charge, the said managing committee will constitute disciplinary sub committee which could ordinarily be having term, co-terminus with the managing committee, for the effective and efficient handling of disciplinary process as per Rule 198. However, the managing committee will be at liberty to re-constitute such disciplinary sub committee even before expiry of the term, if it is so found necessary and proper.

CONCLUSION

87. So, in answer to the issue referred to this Full Bench by the referring Bench, it is held that the view rendered by the Division Bench of this Court in ***Kodanchery's case*** supra [2020(4) KLT 129 (DB)], more particularly in para No.5 thereof, to the effect that the Managing Committee (appointing authority of a co-operative society) is the sole and exclusive authority to issue memo of charges to employees covered by Rule 198 of the KCS Rules and that the disciplinary sub-committee has no jurisdictional competence at all in that regard, does not reflect the correct legal position.

88. Before parting with these cases, we are obliged to place on record our high appreciation for the valuable service rendered by all the Advocates concerned, who have appeared and made submissions in these cases, more particularly Sri.Ashok M.Cherian, learned Additional Advocate General, Sri.P.N.Mohanan, learned Counsel, Sri.M.Sasindran, learned Counsel, Sri.P.K.Ravi Sankar, learned Counsel, Sri.P.P.Thajudeen, Special Government Pleader (Co-operation), Sri.Saigi Jacob Palatty, learned Senior Government Pleader, Sri.A.L.Navaneeth Krishnan, learned Advocate, etc., in their assistance to us for resolving the issues involved herein.

89. Further, in exercise of the powers under Sec.7 of the Kerala

High Court Act, it is ordered that, the Registry will return back the aforesaid writ appeals to the Division Bench concerned for disposal, in accordance with law and in the light of the legal principles mentioned hereinabove.

Sd/-
ALEXANDER THOMAS, JUDGE

Sd/-
C.JAYACHANDRAN, JUDGE

Sd/-
SHOBA ANNAMMA EAPEN, JUDGE

sdk+, vgd
skk, MMG
Nsd