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W.P.Nos.2165 of 2015 and 21628 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2022

DELIVERED ON : 15.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE,  
THE HON'BLE MR.JUSTICE V.BHARATHIDASAN  
AND  
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.2165 of 2015 and 21628 of 2018

W.P.No.2165 of 2015:

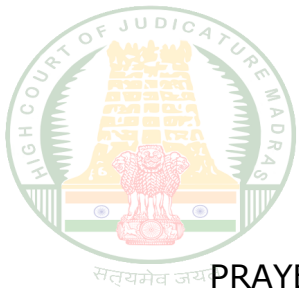
P.Kannan

.. Petitioner

Vs

1. The Commissioner for Municipal Administration  
Municipal Administration Commission  
Ezhilagam Annexure - 6th Floor  
Chepauk, Chennai - 5.
2. The Regional Director of Municipal Administration  
Municipal Administration Regional Office  
Gandhiji Road, Thanjavur.
3. The Commissioner  
Ariyalur Municipality  
Ariyalur.

.. Respondents



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PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records relating to the proceedings in Na.Ka.No.632/2014/c1, dated 5.2.2014 on the file of the third respondent herein and quash the same and consequently direct the respondents to reinstate the petitioner along with all attendant benefits.

W.P.No.21628 of 2018:

D.Sekar

.. Petitioner

Vs

The Assistant Director of  
Survey and Land Records  
Kancheepuram.

.. Respondent

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records relating to the proceedings made in R.C.No.C2/2157/2017, dated 4.4.2017, to quash the same and to direct the respondent to reinstate the petitioner into service with all service benefits, including monetary benefits.

For the petitioner in : Mr.G.Ilamurugu  
W.P.No.2165 of 2015

For the petitioner in : Mr.M.Muthappan  
W.P.No.21628 of 2018



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For the Respondents : Mr.P.Muthukumar  
State Government Pleader  
assisted by  
Mr.B.Vijay  
Additional Government Pleader

COMMON ORDER

THE HON'BLE CHIEF JUSTICE

In pursuance of the order dated 20.12.2021 passed by the learned Single Judge in W.P.No.2165 of 2015, the matter has come up before the Larger Bench.

2. The reference by the learned Single Judge is on account of two conflicting judgments delivered by the Division Benches on a challenge to the order of suspension. By the order of reference, the learned Single Judge referred to the view expressed by a Division Bench in the case of the **Director General of Police and another v. T.Kamarajan, 2019 SCC OnLine Mad 35836**, and the subsequent judgment delivered by another Division Bench in the case of the **Chairman-cum-Managing Director, TANGEDCO and others v. R.Balaji** [Judgment dated 27.8.2021 passed in



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W.A.No.68 of 2021], where a view different than the view expressed earlier by the Division Bench in **T.Kamarajan**, supra, has been taken.

3. Learned counsel for the petitioners referring to the order passed by the learned Single Judge dated 20.12.2021 by which the reference has been made to the Larger Bench submitted that the issue regarding prolonged suspension of an employee was settled by the Apex Court in the case of **Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291**, but holding the said judgment to be not laying down an absolute proposition on a challenge to the order of suspension, the order of suspension was not interfered and for that the judgment of the learned Single Judge was reversed by the Division Bench in the case of **T.Kamarajan**, supra, while the other Division Bench in the case of **R.Balaji**, supra, upheld the judgment of the learned Single Judge where interference with the order of suspension was made in the light of the judgment of the Apex Court in **Ajay Kumar Choudhary**, supra.



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4. Referring to the judgment in the case of **Ajay Kumar Choudhary**, supra, it was submitted that the currency of a suspension order can not go beyond three months if within the period aforesaid the memorandum of charges/charge-sheet is not served on the delinquent officer/employee and even if it is served within the time given, a reasoned order must be passed for extension of suspension. In view of the law enunciated by the Apex Court in the case of **Ajay Kumar Choudhary**, supra, an order of suspension beyond the period of three months without service of memorandum of charges/charge-sheet should be interfered with by the High Court and even if the memorandum of charges/charge-sheet is served within a period of three months, then also interference should be made if no reasoned order of extension is passed. In view of the above, a prayer is made to affirm the judgment of this court in the case of **R.Balaji**, supra, which view was otherwise taken by the learned Single Judges in different matters on a challenge to the order of suspension.

5. A reference of the judgment in the case of **State of Tamil**



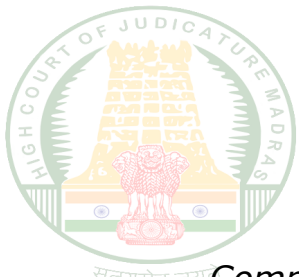
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**Nadu v. Promod Kumar and another, (2018) 17 SCC 677**, has also been given to persuade this court to hold that an order of suspension should not be allowed to continue beyond the period of three months if the memorandum of charges/charge-sheet has not been served. Reference of certain judgments of this court has also been given.

6. Learned counsel for the petitioners referred to the rules governing the case on hand. Adverting to Rule 17(e)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, it is submitted that the authority passing the order of suspension has absolute authority to revoke it and in case it is to be extended, periodical review should be made for extension of time, but in this case the respondents failed to review the order of suspension despite expiry of long period and, thus, it becomes a case of prolonged suspension.

7. The facts of the case have also been referred by learned counsel for the petitioner in W.P.No.2165 of 2015 [*P.Kannan v. The*



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*Commissioner for Municipal Administration and others*]. In the said case, based on a complaint, a trap was organized against one Veeramani, who was sitting next to the petitioner while working as a Clerk. After registration of an FIR, the petitioner was also implicated in the criminal case and was arrested on 4.2.2014, followed by order of suspension on 5.2.2014 treating it to be a case of deemed suspension, as the petitioner remained behind bars for more than 48 hours. In the criminal case, the charge sheet was filed on 12.10.2014, followed by an order of cognizance. The charges against the petitioner were also framed, followed by the trial. It is, however, submitted that a period of almost eight years has elapsed and, therefore, there is no reason not to revoke the order of suspension.

8. A reference of the government order in G.O.Ms.No.40, Personnel and Administrative Reforms (N) Department, dated 30.1.1996 has also been given to bring home the point that in case of prolonged suspension, the court should appropriately direct the revocation of the order of suspension.

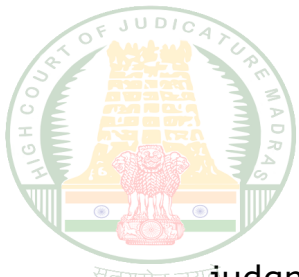


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9. The writ petitions have been opposed by learned counsel for the respondents. It is submitted that the learned Single Judge while referring the case to the Larger Bench has made a reference of the judgment of the Full Bench of this court in the case of **S.Ravi and others v. The District Collector and others, 2015 (3) CTC 465**. Inasmuch as the said judgment covers the issue raised, there was no necessity for the learned Single Judge to refer the matter to the Full Bench for consideration afresh. However, learned counsel hastened to add that reference might have been made for the reason that the judgment of the Apex Court in the case of **Ajay Kumar Choudhary**, supra, was not cited before the Full Bench in the case of **S.Ravi and others**, supra.

10. Learned counsel for the respondents, however, submitted that the issue has been considered and decided by the Division Benches of this court from time to time and, therefore, the view expressed by this court earlier in time, i.e., the judgment in the case of **T.Kamarajan**, supra, should be followed, as the subsequent





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judgment of this court in the case of **R.Balaji**, supra, has no reference to the earlier judgment and is thereby to be rendered *per incuriam*. The Division Bench in the case of **T.Kamarajan**, supra, has made reference of the judgment in the case of **Ajay Kumar Choudhary**, supra, and, therefore, the prayer was to take the view as has been expressed by the Division Bench in the case of **T.Kamarajan**, supra, as otherwise even prior to the aforesaid judgment, another Division Bench of this court in the case of **Arignar Anna Sugar Mills Ltd v. R.Vengatasamy and others, 2017 SCC OnLine Mad 33673**, has taken the same view and held that the judgment in the case of **Ajay Kumar Choudhary**, supra, does not lay down an absolute proposition of law in the matter of suspension, rather the judgment should have been read in the context it has been given. It was also observed in **Arignar Anna Sugar Mills Ltd**, supra, that the judgment of the Apex Court cannot be applied as a statute and, thereby, after traversing the facts of the judgment in the case of **Ajay Kumar Choudhary**, supra, the Division Bench refused to cause interference with the order of suspension. Reference of many other judgments was given



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and would be dealt with at the time of consideration of the rival arguments.

11. We have considered the rival submissions and perused the records and judgments cited on either side.

12. Learned counsel for the petitioners has made a reference of Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and Rule 3(e) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. The said provisions are extracted hereunder:

"Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955:

*Rule 17(e): Conditions under which a member of a Service be placed under suspension.-*

*(1) A member of a service may be placed under suspension from service, where-*

*(i) a disciplinary proceedings against him is contemplated or is pending; or*

*(ii) a case against him in respect of any*



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*criminal offence is under investigation,  
inquiry or trial.*

*(2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended under this rule.*

*(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.*

*(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case,*



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*decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.*

*Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court of law has passed an order purely on technical grounds without going into the merits of the case.*

*(5) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise) and any other disciplinary proceedings are commenced or any other criminal complaint is under investigation or trial against him during the continuance of that suspension, and where the suspension of the Government servant is necessary in public interest as required under clause (1), the*



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*authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings including departmental proceedings taken on the basis of facts which led to the conviction in a Criminal Court.*

*(6) An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate."*

Rule 3(e) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955:

*"Rule 3(e)*

*(1) A member of a service may be placed under suspension from service, where-*

*(i) an enquiry into grave charges against him is contemplated, or is pending; or*

*(ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest.*



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(2) *A member of a service who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended under rule.*

(3) *Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of a Service under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.*

(4) *Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of Service is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal,*



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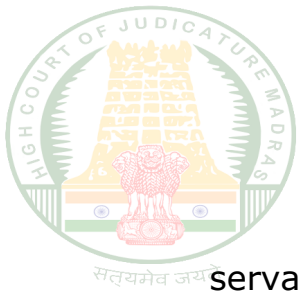
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*removal or compulsory retirement was originally imposed, the member of a Service shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.*

*(5) An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order of by any authority to which that authority is subordinate.*

*Note: It is not necessary to have an oral inquiry or to be heard in person in the case of reduction in rank in seniority lists (A and B list of Constables fit for promotion as Head Constables)."*

13. The Rules have been quoted for the reason that the judgments of different High Courts and the Supreme Court have been rendered based on separate set of rules, which are not similar or *pari materia* to the Rules quoted above. A Central Government



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servant is governed by a separate set of rules and, accordingly, the matter has to be considered in the light of the rules applicable to them. The aforesaid observation has been made looking to the fact that the judgments of the High Courts and the Supreme Court have to be applied after taking note of the facts of the case and not by taking it to be a statute.

14. Before addressing the issue about the applicability of the ratio propounded by the Supreme Court, it would be relevant to refer the judgment of the Supreme Court in the case of **Ajay Kumar Choudhary**, supra. The judgment aforesaid has been heavily relied upon by learned counsel for the petitioners. Before referring to the relevant paragraphs of the judgment aforesaid, as relied upon by learned counsel for the petitioners, it would be relevant to narrate the facts of the said case. The delinquent officer prepared a note that approximately four acres of land were not defence lands, but were private lands in respect of which NOCs could be issued. Based on the note aforesaid, NOCs were issued by the appellant, followed by his transfer. The NOCs granted by the





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appellant resulted in the action against him and he was, thus, placed under suspension from 30.9.2011. Challenge to the order of the suspension beyond the period of 180 days was made. The challenge could not sustain and, ultimately, the matter went to Supreme Court. When the matter reached the Apex Court in the year 2015, a period of four years had already elapsed, and in between the charge-sheet in the criminal case was submitted. In view of the above, the Apex Court refused to cause interference in the order of suspension with the observation that whatever finding has been recorded may not be relevant to the appellant therein. However, it was observed that if the appellant is so advised, he may challenge the continued suspension in any manner known to law. The relevant paragraph heavily relied upon by learned counsel for the petitioners is paragraph (21) of the said judgment. However, it is to be considered in the light of the facts given above. Paragraphs (21) and (22) of the said judgment are quoted hereunder:

**"21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not**



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***served on the delinquent officer/employee; if the memorandum of charges/ charge-sheet is served, a reasoned order must be passed for the extension of the suspension.*** As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be



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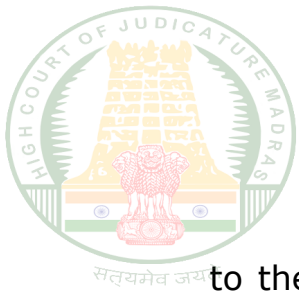
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*held in abeyance stands superseded in view of the stand adopted by us.*

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

*[emphasis supplied]*

15. Paragraph (21) of the judgment in **Ajay Kumar Choudhary**, supra, quoted above rules that currency of the suspension order should not be extended beyond three months if within that period memorandum of charges/charge-sheet is not served on the delinquent officer and even if it is served, the reasoned order must be passed for extension of the suspension. In the next paragraph, i.e., paragraph (22), it was ruled that looking

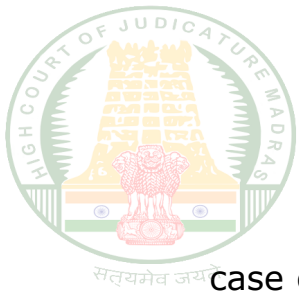


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to the facts of the case, the appellant having been served with the charge sheet, though much beyond the period of three months, the directions given in paragraph (21) were held to be not relevant. Yet, ignoring the direction given in paragraph (22), the judgment in the case of **Ajay Kumar Choudhary**, supra, is applied even in the cases where the charge-sheet is served before the challenge of the order of suspension or during the pendency of the writ petition, though service of charge-sheet may be after a period of three months.

16. The aforesaid is only one aspect to find out the extent of applicability of the case of **Ajay Kumar Choudhary**, supra. Otherwise, the judgment rendered therein is driven by Section 167(2) of the Code of Criminal Procedure, 1973 which provides the period for submission of charge-sheet, but it is only for the purpose of period of remand and does not provide the limitation for submission of charge-sheet in general. The charge-sheet in the criminal case can be filed even beyond the period given under Section 167(2) of the Code of Criminal Procedure, 1973, but in



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case of arrest of the accused and remand in jail during the period of investigation, the remand cannot be extended beyond the period of 90 days or 60 days in a given case and in case the charge-sheet is not filed within the period aforesaid, the accused would be entitled to statutory bail.

17. The fact aforesaid has been explained in reference to Section 167(2) of the Code of Criminal Procedure, 1973 because the Apex Court in the case of **Ajay Kumar Choudhary**, supra, has drawn the analogy of three months from the provision aforesaid and would be reflected from a perusal of paragraph (20) of the judgment, which is quoted hereunder for ready reference:

*"20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. **The Code of Criminal Procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond a period of 90 days***



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**where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence.**

Drawing support from the observations contained of the Division Bench in *Raghubir Singh v. State of Bihar*, (1986) 4 SCC 481 and more so of the Constitution Bench in *Abdul Rehman Antulay v. R.S.Nayak*, (1992) 1 SCC 225, we are spurred to extrapolate the quintessence of the proviso to Section 167(2) CrPC, 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries also. **It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a memorandum of charges/charge-sheet has not been served on the suspended person.** It is true that the proviso to Section 167(2) CrPC postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should



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*also be placed on the same pedestal."*

*[emphasis supplied]*

18. It needs to be clarified that the provisions of the Code of Criminal Procedure, 1973 would have no application to service jurisprudence and, accordingly, the judgment of the Apex Court in **Ajay Kumar Choudhary**, supra, needs to be considered for its application. In such context, the Division Bench of this court in **Arignar Anna Sugar Mills Ltd**, supra, held that the law laid down by the Apex Court in the case of **Ajay Kumar Choudhary**, supra, does not lay down any absolute proposition that order of suspension can never be extended beyond three months. Paragraphs 9, 10, 12, 18 and 19 of the judgment delivered by the Division Bench of this court in **Arignar Anna Sugar Mills Ltd**, supra, are quoted hereunder:

**"9. We are of the view that Ajay Kumar Choudhary (supra) does not lay down any absolute proposition that an order of suspension should never extend beyond three months. In fact, in Ajay Kumar Choudhary (supra), the Supreme Court observed that the**



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**directions regarding the restriction on extension of a suspension order beyond three months would not apply as the appellant had been served with a charge sheet.** The appellant had only been given the liberty to challenge his continued suspension in any manner known to law, if so advised, and it was clarified that the action of the respondents in continuing suspension would be subject to judicial review. In our view, the learned Single Bench erred in setting aside the suspension placing reliance on Ajay Kumar Choudhary (supra).

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

**"9. Courts should not place reliance on decisions without discussing as to how**





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***the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board, (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."***

...

***12. The decision of the Supreme Court in Ajay Kumar Choudhary (supra) enunciates the proposition that principles of criminal law should be applied to departmental proceedings. Even criminal law permits incarceration beyond three months in serious and grave cases pending trial.***

...

***18. It appears that in T.K. Ananda Sayanan (supra),***



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*the question was whether protection under Article 21 of the Constitution of India could be invoked in each and every case of suspension, termination or other orders passed in relation to the services of an employee of a co-operative society and whether a writ petition could be filed on that basis. The question was answered in the negative.*

*19. In T.K. Ananda Sayanan (supra), the Full Bench held that every order affecting the service of a workman would not automatically amount to an infringement of his right under Article 21 of the Constitution enabling him to move the writ court. In the facts and circumstances of the aforesaid case, the Full Bench observed and held that for every alleged violation or invasion of his right, an employee of a co-operative society cannot move the Court on the ground that his right under Article 21 of the Constitution had been infringed."*

*[emphasis supplied]*

19. In **Arignar Anna Sugar Mills Ltd**, supra, it was held that a judgment is to be understood in the context of the facts in which it is rendered. Sentences in a judgment cannot be read in the same



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manner as a statute and otherwise have to be considered in the context the judgment has been given. Paragraph (12) of the judgment quoted above makes a reference about the proposition in reference to the applicability of criminal laws in the departmental proceedings.

20. Subsequent to the judgment aforesaid, a challenge to prolonged suspension was considered by the Division Bench in the case of **Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and others v. A.Srinivasan**, [judgment dated 2.9.2020 passed in W.A.No.599 of 2020], wherein referring to the earlier judgment of a Division Bench of this court in the case of **R.Elumalai v. District Collector, 2020 SCC OnLine Mad 1472** and the judgment of the Delhi High Court in the case of **Government of NCT of Delhi v. Dr.Rishi Anand, 2017 SCC OnLine Del 10506**, it was held that in cases relating to order of suspension involving graft charges leading to criminal trial, interference with the suspension order on the basis that the suspension period exceeded three months is not justifiable.



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21. Another judgment of the Division Bench of this court is in the case of **Secretary to Government v. S.R.Venkatesh, 2019 SCC OnLine Mad 8769**, wherein referring to several judgments of the Supreme Court in paragraph (9) interference with the order of suspension was not made, though therein the judgment of the Apex Court in the case of **Ajay Kumar Choudhary**, supra, was not referred. However, the Division Bench has considered the issue in reference to the judgment of the Five-Judges Bench of the Apex Court in the case of **R.P.Kapur v. Union of India, AIR 1964 SC 787**. The judgment in the case of **R.P.Kapur**, supra, rendered by the Five-Judges Bench of the Supreme Court was not cited by counsel who appeared in the case of **Ajay Kumar Choudhary**, supra.

22. Moreover, there are a series of Constitution Bench judgments pertaining to a challenge to order of suspension, which were not placed for consideration before the Apex Court in **Ajay Kumar Choudhary**, supra. For instance, in **Khem Chand v.**



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सत्यमेव जयते **Union of India, AIR 1963 SC 687**, a Five-Judges Bench of the  
WEB COPY Apex Court held as under:

"16. .... No body can seriously doubt the importance and necessity of proper disciplinary action being taken against government servants for inefficiency, dishonesty or other suitable reasons. Such action is certainly against the immediate interests of the government servant concerned; but is absolutely necessary in the interests of the general public for serving whose interests the government machinery exists and functions. **Suspension of a government servant pending an enquiry is a necessary part of the procedure for taking disciplinary action against him.**"

[emphasis supplied]

23. In **R.P. Kapur**, supra, another Constitution Bench of the Apex Court held as under:

"9. Another argument that is urged on behalf of the respondent is the suspension pending a departmental enquiry or pending a criminal proceeding cannot be said to be a disciplinary matter at all and therefore the protection of Article 314 does not extend to such suspension. We cannot accept



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*this argument. The words "disciplinary matters" with which we are concerned appear in a constitutional provision and must be given their widest meaning consistent with what disciplinary matters may reasonably include. Suspension is of two kinds, namely, as a punishment, or as an interim measure pending a departmental enquiry or pending a criminal proceeding. We shall deal with these aspects of suspension in detail later. So far as suspension as a punishment is concerned, it is conceded that it is a disciplinary matter. The dispute is only as to suspension pending a departmental enquiry or pending a criminal proceeding. There can in our opinion be no doubt that suspension of this kind also must be comprised within the words "disciplinary matters" as used in Article 314. Take the case of suspension pending a departmental enquiry. **The purpose of such suspension is generally to facilitate a departmental enquiry and to ensure that while such enquiry is going on – it may relate to serious lapses on the part of a public servant— he is not in a position to misuse his authority in the same way in which he might have been charged to have done so in the enquiry. In such a case suspension pending a***



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***departmental enquiry cannot be but a matter immediately related to disciplinary matters.***

*Take again the case where suspension is pending criminal proceedings. The usual ground for suspension pending a criminal proceeding is that the charge is connected with his position as a government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. In such a case a public servant may be suspended pending investigation, enquiry or trial relating to a criminal charge. Such suspension also in our opinion is clearly related to disciplinary matters. If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, even in case of acquittal proceedings may follow where the acquittal is other than honourable. The usual practice is that where a public servant is being tried on a criminal charge, the Government postpones holding departmental enquiry and awaits the result of the criminal trial and departmental proceedings follow on the result of the criminal trial. Therefore, suspension during investigation, enquiry or trial relating to a criminal charge is also in our opinion intimately related to disciplinary matters. We cannot*



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*therefore accept the argument on behalf of the respondent that suspension pending a departmental enquiry or pending investigation, enquiry or trial relating to a criminal charge is not a disciplinary matter within the meaning of those words in Article 314."*

*[emphasis supplied]*

24. Admittedly, in **Ajay Kumar Choudhary**, supra, the Two-Judges Bench did not consider the earlier Constitution Bench judgments on the issue of suspension. Qua the binding precedent of the law laid down by a Bench of larger strength, a Constitution Bench of the Apex Court in **Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673** held as under:

*"12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:*





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

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

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

*(i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests*



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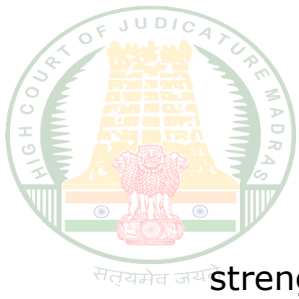
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*the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and*

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

*[emphasis supplied]*

Inasmuch as the Apex Court in ***Ajay Kumar Choudhary***, supra, has not considered the earlier judgments of Constitution Benches of the Apex Court, the earlier judgments, delivered by Bench of larger



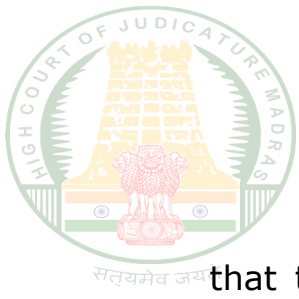
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strength would be binding on High Courts too and it cannot be said that the judgment in **Ajay Kumar Choudhary**, supra, lays down absolute proposition of law on suspension, as what was held in paragraph (21) of the judgment was not applied in the said case itself in paragraph (22). It is despite the fact that charge-sheet therein was submitted much beyond the period of three months.

25. Learned counsel for the petitioners referred to the judgment in the case of **Ajay Kumar Choudhary**, supra, ignoring the set of rules applicable therein and otherwise the judgment therein was not laying absolute proposition of law that in no case the order of suspension can continue beyond a period of three months if memorandum of charges/charge-sheet is not served to the delinquent within a period of three months, rather it was not applied in the said case itself.

26. At this stage, we would like to refer to the judgment of the Apex Court in the case of **Deepak Bajaj v. State of Maharashtra, AIR 2009 SC 628**, wherein the Apex Court held



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that the judgment of a court is not to be read mechanically as a Euclid's Theorem nor as if it was a statute, rather the ratio of the decision has to be understood in the background of the facts of that case.

27. On the subject of precedents, Lord Halsbury, L.C., said in

**Quinn v. Leathem, 1901 AC 495**, as under:

*"Now before discussing the case of Allen v. Flood [1898] A.C. 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that **every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found.** The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is*



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*necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.”*

*[emphasis supplied]*

28. In view of the aforesaid, the court is required to analyze the judgment of the Apex Court in the case of **Ajay Kumar Choudhary**, supra, taking note of the facts and if paragraphs (21) and (22) are read together it would become clear that even the Apex Court has not applied the direction given in paragraph (21) in view of the filing of the charge-sheet during the pendency of the appeal or litigation before the court. It was not a case where the charge-sheet was filed within three months, rather much subsequent to it. Thus, the direction in paragraph (21) of the judgment in the case of **Ajay Kumar Choudhary**, supra, should have been applied after taking note of the facts of that case where even the interference with the suspension order was not made, though by the time the judgment of the Apex Court was rendered, more than a period of four years already passed from the date of suspension. Yet, the Apex Court refused to cause interference with



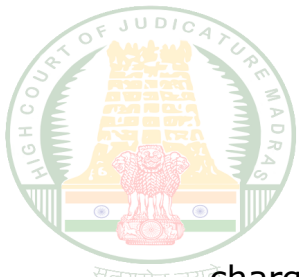
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the order of suspension. The aforesaid cannot be ignored by this court and otherwise the conflicting judgment of this court in the case of **R.Balaji**, supra, is without reference to the earlier judgments of the Division Benches in the case of **T.Kamarajan**, supra, and **Arignar Anna Sugar Mills Ltd**, supra. Thus, the judgment in the case of **R.Balaji**, supra, is to be treated as *per incuriam*.

29. We are not referring to the judgment of the Full Bench in the case of **S.Ravi and others**, supra, for the reason that in the judgment reference of the decision in the case of **Ajay Kumar Choudhary**, supra, was not made.

30. At this stage, we need to refer to the judgment of the Apex Court in the case of **Promod Kumar and another**, supra. The aforesaid judgment is again to be read in the context of the facts given therein. That was a case of deemed suspension, as the employee therein remained behind bars for more than 48 hours. Wherein, largely the issue was in reference to challenge to the

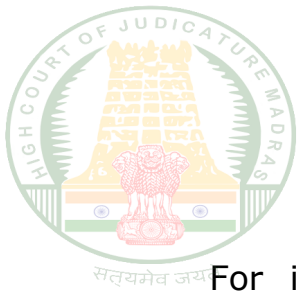


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charge memo. In paragraph (27) of the said judgment, the court analyzing the facts did not find it appropriate to continue the order of suspension, as there would be no threat to the fair trial. The judgment in the said case was on its own facts. Thus, we are of the view that the judgment of the Apex Court in the case of **Ajay Kumar Choudhary**, supra, does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges/charge-sheet is not served within three months. Rather, the issue of challenge to the order of suspension should be analyzed on the facts of each case. It is keeping with the gravity of the charges and the period therein because in case of trap, the order of interference with the order of suspension may have serious consequences.

31. At this stage, it is to be noted that in certain cases where memorandum of charges/charge-sheet was not filed within three months, the order of revocation was passed with a direction to the employer to post the delinquent in a non-sensitive post. In our considered view, such direction may have serious repercussions.



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For instance, when an employee makes an allegation of rape against a co-employee, followed by registration of criminal case, then merely for the reason that charge-sheet could not be submitted within three months if the order of suspension is revoked with a direction to post the employee in a non-sensitive post, it may have serious repercussions. Thus, the court should analyze each case on its facts when a challenge to the order of suspension has been made.

32. Moreover, an order of suspension is not considered to be a punishment, as has been held by the Apex Court in ***State of Orissa v. Bimal Kumar Mohanty, (1994) 4 SCC 126***. For ready reference, paragraph 13 of the said judgment is reproduced hereunder:

*"13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the*





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*order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. **Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without***



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***any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."***

*[emphasis supplied]*

33. Referring to the aforesaid judgment of the Apex Court, a Division Bench of this court in ***The Superintending Engineer, TANGEDCO and another v. Mohan Kumar***, [Judgment dated



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20.1.2022 passed in W.A. (MD) No.1827 of 2021] held as under:

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*"20. In the case of Bimal Kumar Mohanty (supra), the Apex Court held that **suspension is not a punishment, but only one for forbidding or disabling an employee to discharge the duties of office or post held by him. It is with the direction that each case may be considered on its facts and taking into account the gravity of the offence or the misconduct. The interference with the order of suspension should not be driven in reference to a judgment, but needs to be determined on facts and after considering the rules governing the delinquent. Judicial review in such matters should be minimal.** In the instant case, the allegation against the delinquent is quite serious, as he not only demanded but accepted bribe and was caught red-handed by the Anti-Corruption Department. The aforesaid were the relevant facts, but were not considered by the learned Single Judge while causing interference with the order of suspension. It is even after ignoring the earlier judgment of the Division Bench in the case of A. Srinivasan (supra), wherein it was categorically held that the judgment of the Apex Court in the case of Ajay Kumar Choudhary (supra) does not evolve a*



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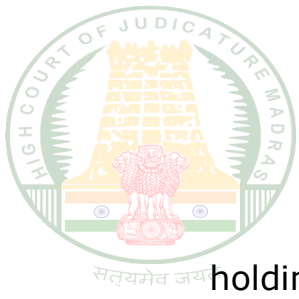
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*general principle for causing interference with the order of suspension if charge-sheet is not served or charge memo is not filed within three months of the order of suspension. The finding of the Division Bench of this Court in the case of A. Srinivasan (supra) has even been ignored, though binding in nature.*

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

*[emphasis supplied]*

34. For the foregoing reasons, the reference is answered by



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holding that:

- (i) The judgment of the Apex Court in the case of **Ajay Kumar Choudhary**, supra, does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges/charge-sheet has not been served within three months, or if memorandum of charges/charge-sheet is served without reasoned order of extension.
- (ii) The judgment in **R.Balaji**, supra, has no reference to the earlier judgments of co-equal strength and is thereby rendered *per incuriam*.
- (iii) The issue of challenge to the order of suspension should be analyzed on the facts of each case, considering the gravity of the charges and the rules applicable.
- (iv) Revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed or directed as a matter of



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course. It has to be based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges/charge-sheet.

The Registry is directed to place the papers before the roster Bench for disposal of the writ petitions.

(M.N.B., CJ.) (V.B.D., J.) (D.B.C., J.)  
15.03.2022

Index : Yes  
sasi

To:

1. The Commissioner for Municipal Administration  
Municipal Administration Commission  
Ezhilagam Annexure - 6th Floor  
Chepauk, Chennai - 5.
2. The Regional Director of Municipal Administration  
Municipal Administration Regional Office  
Gandhiji Road, Thanjavur.
3. The Commissioner  
Ariyalur Municipality  
Ariyalur.
4. The Assistant Director of  
Survey and Land Records  
Kancheepuram.



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THE HON'BLE CHIEF JUSTICE  
V.BHARATHIDASAN,J.  
AND  
D.BHARATHA CHAKRAVARTHY,J.

(sasi)

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15.03.2022