

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (S) No. 4208 of 2012**

Laxmi Prasad Patel S/o Ishwar Prasad Patel, aged about 47 years,
Principal, Government Multipurpose Hr. Secondary School,
Sarangarh, District-Raigarh (CG)

---- **Petitioner**

Versus

1. State of Chhattisgarh, Through-The Secretary, School Education Department, Mantralaya, D.K.S.Bhawan, Raipur, Distt.-Raipur (CG)
2. Director Public Instructions Raipur, District-Raipur (CG)
3. Collector, Raigarh, District-Raigarh (CG)
4. District Education Officer, Raigarh, District-Raigarh (CG)

---- **Respondents**

And**WP (S) No. 5264 of 2012**

Laxmi Prasad Patel S/o Ishwar Prasad Patel, aged about 47 years,
Principal, Government Multipurpose Hr. Secondary School,
Sarangarh, P.S. and P.O. Sarangarh, District-Raigarh (CG)

---- **Petitioner**

Versus

1. State of Chhattisgarh, Through-The Secretary, School Education Department, Mantralaya, D.K.S.Bhawan, Raipur, Distt.-Raipur (CG)
2. Director Public Instructions Raipur, District-Raipur (CG)
3. Collector, Raigarh, District-Raigarh (CG)
4. District Education Officer, Raigarh, District-Raigarh (CG)

---- **Respondents**

And**WP (S) No. 88 of 2013**

Laxmi Prasad Patel, son of Shri Ishwar Prasad Patel, aged 47 years,
Principal, Government Multipurpose Higher Secondary School, P.S. & P.O. Sarangarh, District-Raigarh (CG)

---- **Petitioner**

Versus

1. State of Chhattisgarh, through the Secretary, School Education Department, Mantralaya, D.K.S.Bhawan, Mantralay, Raipur
2. Director, Public Instructions, Raipur, District Raipur (CG)
3. Commissioner, Bilaspur Division, Bilaspur (CG)
4. Collector, Raigarh, District-Raigarh (CG)
5. District Education Officer, Raigarh, District-Raigarh (CG)

---- Respondents

For Petitioner	:	Mr.Rajeev Shrivastava & Mr.D.R.Patel, Advocate
For Respondents	:	Mr.D.R.Minz, Dy.Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

30/10/2015

1. These batch of writ petitions involve common question of law and fact, therefore, they are being heard analogously and decided by this common order.
2. The petitioner was working on the post of Principal at Government Multipurpose Higher Secondary School, Sarangarh, Distt.Raigarh. The appointing authority of the petitioner is the State Government. By order dated 4.9.2012 the petitioner was suspended by the Collector, Raigarh leading to filing of Writ Petition (S) No.4208 of 2012 claiming to be without any jurisdiction and without any authority of law. This Court by order dated 20.9.2012 stayed the same. Thereafter, again by order dated 19.11.2012 the Collector, Raigarh suspended the petitioner after due approval from the Commissioner of the Division leading to filing of Writ Petition (S) No.5264 of 2012. This Court again by order dated 30.11.2012 stayed the effect and operation of the order dated 19.11.2012. Thereafter the

State Government by order dated 27.12.2012 again placed the petitioner under suspension leading to filing of Writ Petition (S) No.88 of 2013.

3. Mr.Rajeev Shrivastava and Mr.Dhani Ram Patel, learned counsel appearing for the petitioner would submit that order dated 4.9.2012 passed by the Collector, Raigarh and order dated 19.11.2012 passed by the Collector, Raigarh after due approval from the Commissioner is without jurisdiction and without authority of law. The petitioner is holding cadre post of Principal of school and his appointing authority is the State Government. The Divisional Commissioner is incompetent to suspend and to initiate disciplinary enquiry and to impose minor punishment on class I and II officers under Rule 9 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as "the Rules of 1966"). They would further submit that when two orders passed on 4.9.2012 and 19.11.2012, both were stayed by this Court, again order of suspension dated 27.12.2012 has been passed by the State Government, which is also unsustainable and bad in law.
4. Learned counsel appearing for the petitioner would further submit that the Collector, Raigarh has passed an order of suspension dated 19.11.2012 after due approval from the Commissioner which is also without jurisdiction and without authority of law. They contended that the State Government in Writ Petition (S) No.88 of 2013 has passed an order of suspension dated 27.12.2012, which is in accordance with Rule

9 of the Rules of 1966. The Commissioner has a jurisdiction. They would also submit that orders of suspension in three cases are dated 4.9.2012, 19.11.2012 and 27.12.2012 and since more than two and half years interim order is operating against continuing of disciplinary inquiry, but yet there is no substantial progress in departmental inquiry and not a single witness has been examined, which is apparent from the letter dated 25.8.2015 issued by the District Education Officer, Raigarh.

5. They would rely upon a decision of the Supreme Court in the matter of **Ajay Kumar Choudhary v. Union of India through its Secretary and another**¹ in which their Lordships of the Supreme Court have held that currency of a suspension order should not extend beyond three months and if charge-sheet is served, a reasoned order must be passed for extension of suspension.
6. Mr.Dil Rati Minz, learned Deputy Government Advocate for the respondents/State would rely upon the notification dated 4th August, 2008 (Annexure R/8 in WP(S) No.88 of 2013) by which the State Government has authorized the Divisional Commissioners to exercise the powers conferred under sub-rule (i) to (iv) of Rule 10 of the Rules of 1966 and as such, the writ petitions deserve to be dismissed.
7. It is not in dispute that the petitioner at the relevant point of time was working as Principal of Government Multipurpose Higher Secondary School, Sarangarh and holding Class-II post. His

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services are governed by the Rules of 1966. His appointing as well as disciplinary authority both are the State Government. The Collector is neither appointing authority nor the disciplinary authority and as such, no such power has been delegated by the State Government to the Collector under Rule 9 of the Rules of 1966.

8. Consequently, Writ Petition (S) No.4208 of 2012 deserves to be and is accordingly allowed and order dated 4.9.2012 (Annexure P/4) passed by the Collector, Raigarh placing the petitioner under suspension is hereby quashed.
9. Coming back to the order dated 19.11.2012 placing the petitioner under suspension by the Collector after due approval from the Commissioner. A bare perusal of the notification dated 4th August, 2008 (Annexure R/8 in WP(S) No.88 of 2013) issued by the State Government shows that the State Government has authorized the Divisional Commissioners only to impose penalty under sub-rule (i) to (iv) of Rule 10 of the Rules, 1966 i.e. minor penalties under the Rules. Even the Collector has no jurisdiction and authority to place the petitioner under suspension even without approval of the Commissioner. Even otherwise, order dated 19.11.2012 has been passed by the Collector with approval of the Commissioner, which cannot be passed by the Collector subordinate to the appointing/disciplinary authority.
10. Consequently, Writ Petition (S) No.5264 of 2012 deserves to and is accordingly allowed and order dated 19.11.2012 (Annexure

P/6) passed by the Collector, Raigarh placing the petitioner under suspension is hereby quashed.

11. Coming back to the order dated 27.12.2012 in WP (s) No.88 of 2013. It is apparent that this order has been passed after staying the effect and operation of the orders dated 4.9.2012 and 19.11.2012 by this Court and order dated 27.12.2012 has also been stayed by this Court by order dated 14.1.2013, which is operating till this date.
12. Memo dated 25.8.2015 and 5.10.2015 filed by the petitioner today and brought on record issued by the District Education Officer, Raigarh to the State Government would clearly show that there is no substantial progress in departmental enquiry and in departmental inquiry, not a single witness has yet been examined and departmental inquiry initiated against the petitioner is pending as it is since long back without any progress.
13. In the matter of **Ajay Kumar Choudhary** (supra), their Lordships of the Supreme Court have frown upon and deprecated attitude of the Government for continuing the currency of suspension orders indefinitely and inordinate period of time and held that if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for extension of suspension. Paragraphs 11 and 12 of the report state as under:-

“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short

duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, this is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law jurisprudence, antedating even the Magna Carta of 1215, which assures that – “We will sell to no man, we will not deny or defer to any man either justice or right.” In similar vein the Sixth Amendment to the Constitution of United States of America guarantees that in all criminal prosecutions the

accused shall enjoy the right of a speedy and public trial.”

14. No such course appears to have been adopted by the Government while issuing the order of suspension dated 27.12.2012 and as such, the order of suspension issued by the State Government was stayed by this Court vide order dated 14.1.2013 in WP(S) No.88 of 2013.
15. This Court of the opinion that since interim order dated 14.1.2013 is operating for two and half years against the order of suspension dated 27.12.2012 and memo of the District Education Officer, Raigarh shows that there is no progress in the inquiry, it would not be appropriate for this Court to dismiss the writ petition at this stage keeping in view the binding observation and in absence of any order by the State Government.
16. In the matter of **Ajay Kumar Choudhary (supra)**, their Lordships of the Supreme Court have further observed in paragraph 21 as under:-

“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/chargesheet is not served on the delinquent officer/employee; if the memorandum of charges/chargesheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the 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 recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that 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 held in abeyance stands superseded in view of the stand adopted by us.”

17. In the light of observation of the Hon’ble Supreme Court, the State Government is free to transfer the petitioner to any other suitable place so as to sever him from any adverse effect on the pending departmental inquiry.
18. Consequently, writ petition (S) No.88 of 2013 is disposed off with a direction that interim order dated 14.1.2013 would continue till the disposal of departmental inquiry. However, it is made clear that this Court has not expressed any opinion on merits of this case particularly relating to departmental inquiry and the

Government is free to proceed with departmental inquiry in accordance with law and to conclude it expeditiously preferably within a period of six months from the date of receipt of copy of this order. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
JUDGE

B/-