

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3374 of 2015**

- Baldev Singh S/o Late Shri Bhuvan Singh, Aged About 61 Years Occupation Vehicle Driver (Suspended) Tribal Department Durg, P.S. Durg, Civil & Revenue District Durg Chhattisgarh R/o House No. 165, New Subhash Nagar, Ward No. 41, Kelabadi, Durg, Tahsil And District Durg Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Tribal Development Department, New Mantralaya, Mahanadi Bhawan Raipur, District Raipur Chhattisgarh
2. The Collector, Durg, Tahsil & District Durg Chhattisgarh
3. Assistant Commissioner, Tribal Department Durg, Tahsil And District Durg Chhattisgarh
4. Chief Executive Officer, Janpad Pancyhayat Durg, (Inquiry Officer) Tahsil And District Durg Chhattisgarh

---- Respondents

For Petitioner	:	Shri RS Patel, Advocate
For Respondents-State	:	Shri DK Wankhede, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****17/09/2015**

1. With the consent of the learned counsel for the parties, the matter is heard finally.
2. Learned counsel for the petitioner would submit that the petitioner, who is working as Vehicle Driver has been placed under suspension on 10.02.2012, however, since thereafter the enquiry is not yet complete. He would submit that for the last more than 3 years, the petitioner is under suspension.

3. In the matter of ***Union of India and another v. Ashok Kumar Aggarwal***¹, the

Supreme Court has held thus:

24. Long period of suspension does not make the order of suspension invalid. However, in *State of H.P. v. B.C. Thakur*, this Court held that where for any reason it is not possible to proceed with the domestic enquiry the delinquent may not be kept under suspension.

“26. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in *State of M.P. v. Shardul Singh*, *P.V. Srinivasa Sastry v. Comptroller & Auditor General*, *ESI v. T. Abdul Razak*, *Kusheshwar Dubey v. Bharat Coking Coal Ltd.*, *Delhi Cloth & General Mills Ltd. v. Kushal Bhan*, *U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan*, *State of Rajasthan v. B.K. Meena*, *Prohibition and Excise Deptt. v. L. Srinivasan* and *Allahabad Bank v. Deepak Kumar Bhola*, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is *ordinarily* not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay *for no fault of the employee concerned*. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial cannot be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question.”

¹ (2013) 16 SCC 147

4. In the matter of **Ajay Kumar Choudhary v. Union of India and another**², the Supreme Court has deprecated the practice of keeping an employee under suspension for long period. The following has been held:-

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, that 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 the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.”

5. In view of the foregoing since the petitioner is placed under suspension for last more than 3 years, the writ petition is disposed of with a direction that in the event, the petitioner prefers a representation seeking revocation of suspension, within a period of 1 month from today, the competent authority shall consider and decide the representation keeping in view the desirability of continuing the suspension and shall pass speaking order, at the earliest, preferably within a period of 2 months from the date of submission of representation.

² (2015) 7 SCC 291

6. It is made clear that this Court has not expressed any opinion on the merits of the case and the respondent authorities shall decide the matter, on its own merits, strictly in accordance with law, without treating any observation made in this order, as opinion on the merits of the case.

Sd/-
JUDGE
PRASHANT KUMAR MISHRA

ashu