

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2944 of 2016**

Shiv Kumar Sahu S/o. Late Nathu Ram Sahu, Aged About 46 Years
 R/o. Gram Panchayat : Kutela, Police Station : Aarang, Post :
 Samoda, District : Raipur (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat & Gramin Development Department, Mantralaya, New Raipur, Police Station : Rakhi, District : Raipur (Chhattisgarh)
2. The Collector, Raipur, District Raipur (Chhattisgarh)
3. Chief Executive Officer, Jila Panchayat, Raipur, District : Raipur (Chhattisgarh)
4. Chief Executive Officer, Janpad Panchayat : Aarang, District : Raipur (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. P.K. Patel, Advocate.
For State	:	Mr. Dheeraj Wankhede, Government Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****18/07/2016**

Heard on admission.

The petitioner has filed this petition seeking a direction to respondents to consider the case of the petitioner for revocation of suspension order which was issued way back on 01.06.2012.

2. Relying upon the Government circular dated 02/07/2012 (Annexure P/2), learned counsel for the petitioner submits that the petitioner has been suspended on institution of criminal proceedings and those proceedings have not been completed within a reasonable time. Therefore, further

continuance of suspension is required to be considered and if no justification is found for further continuance, it is liable to be revoked.

The petitioner was suspended way back on 01.06.2012 and more than four years have elapsed. The criminal case has not been concluded till date. Therefore, in these circumstances, the case of the petitioner would require consideration for revocation in terms of circular dated 02/07/2012.

3. Learned State counsel does not dispute the policy considerations as engrafted in circular dated 02/07/2012. He, however, submits that the competent authority would require consideration of all the relevant aspects including the date of arrest, date of framing of charge and the period of delay occurred in the criminal trial.

Long continuance of suspension has been deprecated by the Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India through its Secretary and another, (2015) 7 SCC 291**. The Supreme Court held -

“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 period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in [Raghubir Singh vs. State of Bihar](#), 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 of [Section 167\(2\)](#) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though

accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Charge-sheet has not been served on the suspended person. It is true that the proviso to [Section 167\(2\)](#) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

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 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 concerned person to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

4. Present is a case where the suspension of the petitioner was as a result of arrest and institution of criminal proceedings on the allegation of

having committed offence under Indian Penal Code. It has been clearly stated in the petition on affidavit that till date, criminal proceedings have not been concluded. The petitioner has remained under suspension for almost four years. This is too long a time. It is well known that if the suspension is continued for a long time, employee is entitled to 75% of his salary as subsistence allowance. This would mean that the employee will get 75% of his salary without working. Therefore, in these circumstances, policy decision of the Government rightly requires consideration of the case for revocation of suspension. However, all the relevant circumstances are required to be looked into. Many a times, public consideration may outweigh the individual grievance. However, such cases are rare and not too often. It is not a case where the petitioner is an accused of having committed heinous offence like murder, sexual harassment or any case of corruption. Therefore, in these backdrop and that the petitioner has remained under suspension and may be getting 75% of his salary as subsistence allowance without doing any work, the competent authority / respondent No.3, the Chief Executive Officer, Jila Panchayat is directed to consider petitioner's case for revocation, taking into consideration all relevant circumstances, particularly taking into consideration long period of suspension and that he is not facing heinous charges of the category enumerated hereinabove. The decision shall be taken within a period of 45 days from the date of submission of copy of this order and fresh representation. The petitioner should submit fresh representation within a period of two weeks from today before the Chief Executive Officer.

5. With the aforesaid observations, the petition is finally disposed off.

Sd/-

(Manindra Mohan Shrivastava)
Judge