

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3521 of 2016

Mahendra Kumar Sahu S/o Shri D.R.Sahu, Aged About 46 Years Working As A Gramin Swasthya Sanyojak (Village Health Organizer V H O) (Now Suspended), Chief Medical And Health Office, Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through its Secretary, Health And Family Welfare Department, Mahanadi Bhawan Mantralaya New Raipur, P.S.Rakhi, Distt. Raipur, Chhattisgarh
2. Director, Health Services Indrawati Bhawan New Raipur, P.S. Rakhi, Distt. Raipur, Chhattisgarh
3. Chief Medical And Health Officer, O/o The Chief Medical And Health Office, Bilaspur District Bilaspur, Chhattisgarh

---- Respondents

Shri Vinod Deshmukh, counsel for the petitioner/s.
Shri Sangharsh Pandey, Dy.G.A. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

09/08/2016

Heard.

This petition has been filed by the petitioner aggrieved by suspension and non-consideration of his prayer for revocation of suspension.

2. Learned counsel for the petitioner submits that on account of some criminal charges, the petitioner has been suspended on 03/02/2015. Thereafter, the petitioner has remained under suspension for 1½ years. He submits that the criminal case is still going and trial has not been concluded till date. Relying upon the circular of the Government issued on 02/07/2012, learned counsel for the petitioner contended that after one year, the respondent authorities are obliged to consider whether further continuance of suspension is necessary in administrative interest or not. He submits that the nature of allegations in the criminal case do not

warrant continuance of suspension for such a long time.

3. Learned State counsel submits that petitioner's representation for revocation of suspension shall be considered in accordance with the Government's policy dated 02/07/2012 and all attending circumstances.

4. In view of above, at this stage, this petition need not be kept pending. It has to be noted that recently, the Supreme Court, in the case of **Ajay Kumar Choudhary v. Union of India through its Secretary and another, (2015) 7 SCC 291**, has examined the issue of long suspension and has 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.”

5. In view of the aforesaid judicial pronouncement of the Supreme Court and the aforesaid submissions, petitioner's case requires serious consideration whether he should be still continued on suspension or not. The representation of the petitioner shall be considered within a period of 30 days from the date of receipt of copy of this order by the competent authority.

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

Sd/-

(Manindra Mohan Shrivastava)
Judge