

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3546 OF 2016**

Komal Chand Kosle Aged About 49 Years Presently Posted As Patwari, Tehsil Simga, S/o Late Shri Phool Chand Koshale, R/o Near St. Mary School, Lal Bhadur Shastri Ward, Bhatapara, District Balodabazar Bhatapara (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Revenue, Mantralaya, Mahanadi Bhawan, Naya Raipur, (Chhattisgarh)
2. Collector, Bhatapara, District Balodabazar Bhatapara (Chhattisgarh)
3. Sub Divisional Officer (Revenue), Bhatapara, District Balodabazar Bhatapara (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. Kishore Bhaduri, Advocate and Mr. Pawan Kesharwani, Advocate
For Respondent-State	:	Mr. Dilmanrati Minj, Dy. Govt. Advocate, on advance copy

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order on Board****09/08/2016**

Heard on admission.

1. Learned counsel for the petitioner submits that certain allegations of misconduct leveled against the petitioner, which according to the him are not made out. The petitioner was placed under suspension vide order dated 15.4.2015. Thereafter, a charge sheet has been issued on 18.5.2015. The departmental enquiry proceeding is pending for almost one year and delay is attributed on the part of the respondent authorities not by the petitioner.
2. Learned counsel for the petitioner placed reliance in the matter of **Ajay Kumar Choudhary v. Union of India** through its Secretary and another

reported in (2015) 7 SCC 291, in which, the Supreme Court has examined the issue with regard to long suspension of continuance. Paragraphs-20 and 21 of the said judgment reads as follows:

“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 Cr.P.C. of 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 Raghbir Singh vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, 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/Chargesheet 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/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 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.”

3. In view of the above-stated judicial pronouncement in case of **Ajay Kumar Choudhary (supra)** petitioner has suffered from continued suspension for long period. Therefore, Respondent No.2/Collector Baloda Bazar-Bhatapara shall examine the necessity of further continuance of petitioner's suspension in light of judgment in **Ajay Kumar Choudhary (supra)** and decision shall be taken within a period of 30 days from the date of receipt of copy of this order.

4. With the aforesaid observation, writ petition stands finally disposed off.

Sd/-

(Manindra Mohan Shrivastava)
Judge