

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2069 of 2016

Jagannath Gupta S/o Shri Lalmani Gupta, Aged About 51 Years R/o Ward No. 18, Civil Lines, Manendragarh, Distt. Koriya (Chhattisgarh)

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Its Secretary, Panchayat And Rural Development Department, Naya Raipur Distt. Raipur (Chhattisgarh)
2. Director, Panchayat, Naya Raipur Distt. Raipur (Chhattisgarh)
3. Chief Executive Officer, Jila Panchayat Distt. Koriya (Chhattisgarh)

---- **Respondents**

Shri Parag Kotecha, counsel for the petitioner/s.
Shri Ajit Singh, Panel Lawyer for the State / respondents 1 and 2.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

15/07/2016

Earlier time was granted to State counsel to seek instructions.

State counsel submits that the order has been passed by respondent No.3.

2. Learned counsel for the petitioner submits that for the present, the petitioner will feel redressed if a direction is issued to respondent No.3 to consider revocation of suspension due to long continuance.

3. The petitioner was suspended by the Chief Executive Officer vide order dated 09/06/2014. More than two years have elapsed by now. The Departmental Enquiry so far has not been concluded.

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 anr., 2015 AIR SCW 2520. The Supreme Court held -

“13. 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 CrPC 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 of the Division Bench in [Raghubir 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 to [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.

14. 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. In view of the aforesaid judicial pronouncement of the Apex Court, the petitioner is entitled to serious consideration on his prayer for revocation of suspension. Respondent No.3 is directed to consider petitioner's prayer for revocation of suspension in the light of the judgment of the Supreme Court referred to above and take decision within a period of 30 days from the date of receipt of copy of this order.

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

Sd/-
(Manindra Mohan Shrivastava)
Judge