

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPS No. 2612 of 2016**

James Kumar Beck S/o Late John Beck, Aged About 45 Years Occupation- Assistant Grade- II, Department Of Health, R/o Khutanpara, Baikunthpur, Tahsil Baikunthpur, District Koriya, (Chhattisgarh)

**---- Petitioner**

**Versus**

1. The State Of Chhattisgarh Through: The Secretary, Health Department, Mahanadi Bhawan, Naya Raipur, District Raipur, (Chhattisgarh)
2. The Director, Health Services, Indrawati Bhawan, Naya Raipur, (Chhattisgarh)
3. The Collector, Koriya, Baikunthpur, District Koriya, (Chhattisgarh)
4. Chief Medical Officer, Koriya- Baikunthpur, District Koriya, (Chhattisgarh)
5. Additional Collector, Koriya- Baikunthpur, District Koriya, (Chhattisgarh)
6. Block Medical Officer, Block Patna, Community Health Center, Patna, Tahsil Patna, District Koriya, (Chhattisgarh)

**---- Respondents**

---

|                |   |                            |
|----------------|---|----------------------------|
| For Petitioner | : | Shri R.S. Baghel, Advocate |
| For State      | : | Shri S.P. Kale, Dy.A.G.    |

---

**S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava**

**Order On Board**

**21/09/2016**

Heard.

1. The suspension order as well as institution of departmental enquiry against the petitioner has been challenged mainly on the ground of competence and delay in holding enquiry as also for full payment of subsistence allowance.
2. As far as the ground of competence is concerned, in view of circular dated 23<sup>rd</sup> May, 1996 published in the Rajpatra on 10.1.1997, it is clear that the Collector has been delegated the power and authority to impose minor penalty. It is clear

that power to impose minor penalty and suspend a Class-III or Class-IV employee (except police personnel) has been delegated to the Collector. Therefore, the Collector is invested with the power not only to suspend but also to institute departmental enquiry. On this count, no relief can be granted. However, it is found that the petitioner has remained under suspension for last more than 4 years. He was suspended on 15.5.2012 and departmental enquiry, till date, has not been concluded.

Learned counsel for the State submits that the petitioner is wholly responsible for delay in enquiry because he is not cooperating. To support this submission, he has referred to averments and the documents in the reply.

3. There is also an issue with regard to non-payment of full subsistence allowance. While the petitioner contends that full subsistence allowance has not been paid for various period, respondents have placed on record document to submit that the subsistence allowance is being properly paid to the petitioner.
4. Having considered the submissions made by learned counsel for the parties, I deem it expedient to dispose off the matter with a direction to consider revocation of petitioner's suspension after taking into consideration all the circumstances of the case. In this regard, the respondents shall be guided by the principles laid down by the Hon'ble Supreme Court in the recent judgment in the case of **Ajay Kumar Choudhary V. Union of India through its Secretary and Anr.** (2015) 7 SCC 291, wherein it has been held:

“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 recognise that the 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. Let the decision with regard to suspension part be taken within a period of 45 days by the disciplinary authority as to whether there is any justification for continuing suspension for such a long period of 4 months. Moreover, considering that the departmental enquiry has been continued for long time, the petitioner and the respondent both are directed to ensure that the departmental enquiry is concluded at the earliest. The petitioner shall neither claim nor be allowed to seek adjournment on unnecessary ground and all efforts shall be made to complete the departmental enquiry at the earliest preferably within a period of 6 months from the date of receipt of copy of this order by the disciplinary authority.

The grievance relating to non- payment of full subsistence allowance shall be examined by the Collector/respondent No.3 and depending upon the receipts of the amount by the petitioner, finding of fact shall be recorded by the Collector by speaking order with regard to petitioner's claim of balance payment of subsistence allowance. This shall also be done by the Collector within a period of 45 days from the date of receipt of copy of this order.

6. With the observation and direction as above, the petition is finally disposed off.
7. It goes without saying that if in the departmental enquiry any adverse order

-4-

against the interest of the petitioner is passed, it will always be open for the petitioner to challenge the same before the appropriate forum.

Sd/-  
**(Manindra Mohan Shrivastava)**  
Judge

Praveen