

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6487 of 2017

L. P. Chandra S/o Kondaram Chandra, Aged About 61 Years Sub Engineer, Water Resources Department, Sub Division No. 2, Kota, Bilaspur R/o Gaya Vihar, New Sarkanda, Bilaspur District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary Water Resources Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. Joint Secretary, Water Resources Department, State Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Naya Raipur District Raipur Chhattisgarh
3. Engineer In Chief, Water Resources Department Sihava Bhawan, Raipur District Raipur Chhattisgarh
4. Chief Engineer Hasdev Besin, Water Resources Department Bilaspur District Bilaspur Chhattisgarh
5. Superintendent Engineer, Water Resources Circle Bilaspur District Bilaspur Chhattisgarh
6. Executive Engineer, Water Resources Division Kota District Bilaspur Chhattisgarh

---- Respondents

Shri Mateen Siddiqui, counsel for the petitioner/s.
Shri Avinash Singh, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

28/11/2017

This petition has been filed by the petitioner aggrieved by suspension order on 08/03/2017 which has continued for the last eight months.

2. Learned counsel for the petitioner would submit that on certain allegations of irregularity in execution and maintaining certain construction work, the petitioner was placed under suspension on 08/03/2017 passed by the State

Government. It is submitted that thereafter, a charge sheet was also issued to the petitioner on 02/06/2017 which was duly replied. The Superintending Engineer, Water Resources, Circle Bilaspur has made recommendation on 13/09/2017 to the Chief Engineer, Hasdeo Kachhar, Water Resources, Bilaspur that the case of the petitioner be closed. Therefore, it is prayed that suspension order be set aside or revoked.

3. The suspension order was issued way back on 08/03/2017. Considering the allegations, the suspension order, at its inception, does not appear to be arbitrary. However, it is found that the suspension order has continued since long without due application of mind as to whether its further continuance is necessary, at the stage of issuance of charge sheet on 02/06/2017.

4. Long continuance of suspension on account of pendency of criminal case or departmental enquiry has been strongly deprecated by the Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India through its Secretary and anr., (2015) 7 SCC 291**. In that case, Hon'ble Supreme Court observed that where an employee has been placed under suspension and thereafter, a charge sheet is issued, at the time of issuance of charge sheet, the employer is obliged under the law to apply its mind, whether further continuance of suspension is necessary or not. It has been held as below -

“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. Therefore, the aforesaid mandate of law obliges the authority to state, by recording reasons, why further continuance of petitioner's suspension is necessary. Even if the petitioner has not filed any appeal against the order of suspension, continuance of suspension would require periodic review and a person cannot be kept under suspension for indefinite period. This Court further finds that the Superintending Engineer has already made recommendation in favour of the petitioner.

6. Therefore, in these circumstances, continuance of suspension of the petitioner without considering in terms of the judgment of the Supreme Court and without any justification for further continuance of suspension does not appear to be in accordance with law. A direction, therefore, needs to be issued to respondent No.1 to examine the case of the petitioner in the light of the observations made by the Supreme Court in the case of **Ajay Kumar Choudhary** (supra) and keeping in view the recommendations made by the Superintending Engineer towards revocation of petitioner's suspension. The State Government shall pass necessary orders in the matter within 30 days from the date of receipt of copy of this order as the petitioner is going to retire on 31/01/2018. If no order is passed within 30 days from the date of receipt of the copy of the order, the suspension shall stand revoked automatically.

7. The petition is accordingly finally disposed off.

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