

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 7029 of 2017**

Vinay Kumar Tiwari S/o Late Shri G. P. Tiwari Aged About 41 Years
R/o H - 24 / 9 Civil Lines, Durg, District Durg, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of Social Welfare, Mahanadi, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
2. Chief Executive Officer, Janpad Panchayat Durg, District Durg, Chhattisgarh.
3. Collector, District Durg, Chhattisgarh.

---- Respondents

For Petitioner	:	Mrs. Fouzia Mirza, Advocate
For Respondent/State	:	Mr. Manish Nigam, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****12/12/2017**

Heard.

1. The petitioner is aggrieved by long continuation of suspension order dated 10.08.2016 passed by the Collector on certain allegation of misconduct.
2. Learned counsel for the petitioner would submit that the petitioner is not challenging the validity of the suspension order as issued on 10.08.2016 but he is aggrieved by long continuance of suspension.

3. Relying upon the decision of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India through its Secretary and another, (2015) 7 SCC 291**, it is submitted that there is absolutely no justification for continuing suspension order for such a long period.
4. Learned counsel for the petitioner stresses upon the submission that the charge sheet was issued to the petitioner on 15.09.2016 but till date, it has not been concluded and delay is not attributable to the petitioner. It is highlighted that the witnesses are not turning up and one who has turned up to depose before the enquiry officer has not said anything against the petitioner to substantiate the charges.
5. In the case of **Ajay Kumar Choudhary (supra)**, the Supreme Court had an occasion to examine the propriety of keeping an employee under suspension for a long period. Their Lordships in the Supreme Court expressed their concern 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 *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/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/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 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.”

6. In the facts and circumstances of the present case, the petitioner's case requires consideration for revocation of the suspension order in the light of the aforesaid legal principles. Unless there are very strong reason to continue suspension order, the suspension order should be brought to an end. Let the Collector, pass suitable orders upon examination of the case of the petitioner, relevant circumstances and the decision of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary (supra) within a period of 30 days from the date of receipt of copy of this order.

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