

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3005 of 2017**

Ram Kumar Rajwade S/o Late Shri Matuk Ram Rajwade Aged
About 44 Years Suspended Panchayat Secretary, Panchayat And
Rural Development, Mahanadi Bhawan Mantralay, Naya Raipur,
P.O. & P.S. Naya Raipur, District Raipur, Chhattisgarh

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through: The Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Mantralay, Naya Raipur, P.O. & P.S. Naya Raipur, District Raipur, Chhattisgarh
2. Director Panchayat Raipur, District Raipur, Chhattisgarh
3. Collector, District Koriya, Chhattisgarh
4. Chief Executive Officer, Zila Panchayat Koriya, District Koriya, Chhattisgarh
5. Chief Executive Officer, Janpad Panchayat Baikunthpur, District Koriya, Chhattisgarh
6. General Administration Committee Through Its President Zila Panchayat Koriya, Baikunthpur, District Koriya, Chhattisgarh
7. Village Panchayat Amarapur, Through The Sarpanch Baikunthpur District Koriya, Chhattisgarh

---- **Respondents**

For Petitioner	:	Mr. V.K. Pandey, Advocate.
For State	:	Mr. A.S. Kachhawaha, Additional A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****13/07/2017**

Heard.

1. This petition has been filed by the petitioner aggrieved by order dated 06.06.2017 by which the petitioner's appeal against an order of suspension dated 25.03.2017 has been dismissed.

2. Learned counsel for the petitioner submits that the petitioner did not commit any misconduct and discharged his duty faithfully and obediently. He submits that the order of suspension was result of spot inspection made by the certain authorities without there being any opportunity of hearing to the petitioner to explain. He submits that when the notice was issued to the petitioner on 15.03.2017, he went to submit his reply on 22.03.2017 before the officer concerned but he has refused to take the same and without considering the petitioner's explanation, the power of suspension was exercised mechanically by the authority. This important ground raised by the petitioner in appeal, was not paid due attention by the appellate authority which led to mechanical dismissal of appeal.
3. The next contention of learned counsel for the petitioner is that even though the suspension order was passed way back on 25.03.2017, till date, charge sheet has not been issued to the petitioner which shows that there is no material to proceed against the petitioner.
4. The allegations against the petitioner was result of spot inspection carried out by the higher authority in the office of the Gram Panchayat where the petitioner was posted as Secretary. The impugned order shows that at the time of inspection, the petitioner was found absent from duty and it has also been recorded that during inspection, various works were found to be without any progress and closed and there are allegations of misappropriation of public fund also.
5. Taking into consideration these grounds the appellate authority dismissed the appeal.
6. Though, it was the contention of learned counsel for the petitioner that the petitioner's reply was not considered before passing order of suspension, the impugned order goes to show that there is serious dispute with regard to the fact as to whether the petitioner had at all submitted his reply on or before 22.03.2017.

7. It is disputed fact whether his reply was refused to be taken by the clerk on 22.03.2017.
8. Learned counsel for the petitioner could not dispute that the reply was required to be filed by 22.03.2017 and it could not be filed by that time though it was filed by the next day. Therefore, for all those reasons, I do not find that there is any ground to interfere with the order of the appellant authority, in exercise of jurisdiction under Article 226 of the Constitution of India.
9. However, there is one thing which is of concern and needs to be addressed in this order. It is common knowledge that in public employment, while conferring drastic power of suspension on the employer, the provisions are made to ensure that charge sheet is issued within a reasonable time. In the State of Chhattisgarh, in State Government Service, provision contained in Civil Services (Classification, Control and Appeal) Rules 1966 (for short 'the Rules of 1966') obliges the competent authority, empowered to suspend an employee, to ensure that charge sheet is issued within a period of 90 days or 45 days, depending upon the class of the employee. I, however, find that there is no such provision in Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short 'the Rules of 1999'). The power of suspension once exercised, leaves the employee at the mercy of the officer without there being any corresponding obligation on the authority/ employer to crystallize and formulate the charge sheet and issue the same to ensure that the enquiry against the employee is initiated at the earliest when he has been placed under suspension. True, it is that suspension is not a penalty but then one cannot lose sight of the adverse consequences following the order of suspension which not only results in temporary loss of pay because the employee only gets subsistence allowance but it also results in a situation with the employee may find difficult to cope up with. In a recent decision, the Supreme Court had an occasion to examine the propriety of keeping an employee under suspension for a long period in the case of **Ajay Kumar Choudhary V. Union**

of India, (2015) 7 SCC 291. Their Lordships in the Supreme Court expressed their concern as below :

“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.”

10. Therefore, once there is an order of suspension issued by the authority, it is in the interest of the employer and employee both to bring to its logical conclusion in a time bound manner. But as there is no provision in the Rules obliging the authority to issue charge sheet within a reasonable time, as has been provided in the matter of Government servants in the State under the Rules of 1966. The petitioner presently continues under suspension even after more than 3 ½ months without there being any charge sheet issued to him and departmental enquiry if any initiated against him. This situation has to be avoided.

11. The State should consider this aspect and carry out necessary amendment in the Rules of 1966 to provide a reasonable period within which charge sheet should be issued to an employee who has been placed under suspension.

12. Under existing Rules, even though there is no specified time limit within which charge sheet is required to be issued to an employee who has been placed under suspension, there definitely exists a provision contained in Sub Rule 5 of Rule 4 of the Rules of 1999, which is extracted herein below :

“4. Suspension - (1) xxxxxxxxxxxxxxxxxxxx
(2) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
(3) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
(4) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
(5) (a) An order suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a member of Panchayat Service is suspended or is deemed to have been suspended in connection with any disciplinary proceeding or otherwise and any other disciplinary proceeding is commenced against him during the continuance of such suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the member of Panchayat Service shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule, may at any time be modified or revoked by the authority which made or is deemed to have made it or by any authority to which, that authority is subordinate.”

13. Even where the order of suspension at the beginning may be fully justified, with passage of time, its continuance may not be warranted. One of the situation may be that charge sheet has not been issued within a reasonable time. As to what would be the reasonable period within which charge sheet should be issued, in the absence of any definite prescription under the Rules, has to be decided in the facts and circumstances of every case. But definitely, it cannot be a years together. Ordinarily, within three months the charge sheet should be issued and that should be taken as a reasonable period. In the present case, looking to the

nature of allegation, three months period was sufficient to issue the charge sheet but no charge sheet has been issued for more than 3 ½ months. This could be a ground for the petitioner to seek revocation of the order of suspension and if raised, by moving a representation, the authority must decide the representation within a period of 15 days from the date of receipt of copy of representation. Irrespective of the result of petitioner's representation, the competent authority is expected to issue charge sheet, if at all necessary, at the earliest.

14. Subject to the direction issued above, no other relief can be granted to the petitioner.

15. The petition is accordingly disposed off.

16. Learned Additional Advocate General shall apprise the concern of the Court as expressed herein above and need for appropriate amendment in the Rules on the lines expressed in the order.

Sd/-

(**Manindra Mohan Shrivastava**)
J U D G E