

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4067 of 2017

Bhola Ram Patel S/o Late Shri Sudama Patel Aged About 45 Years
Occupation- Service, Posted As Panchayat Secretary, Gram Panchayat-
Gadadih, Tahsil- Saja, District Bemetara, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary Panchayat And Rural Development Department, Mantralaya Mahanadi Bhawan, Capital Complex New Raipur, District Raipur, Chhattisgarh.
2. Deputy Director Panchayat & Social Welfare, District Durg, Chhattisgarh.
3. Chief Executive Officer Janpad Panchayat- Saja, District Bemetara, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Yogesh Pandey, Advocate
For State	:	Shri Avinash Singh, Panel Lawyer

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

Order On Board

06/11/2017

Heard.

1. Despite repeated judicial pronouncements of the Apex Court and this Court in number of cases, it is found that the authorities have been using the power of suspension as a device of penalty without even caring to issue charge sheet within reasonable period.
2. Present case is a classic example of this unbridled and arbitrary exercise of power of suspension. On certain allegation of commission of misconduct that the petitioner misappropriated certain funds, he was placed under suspension vide order dated 4.5.2016 while he was working as Panchayat Secretary. After placing the petitioner under suspension, as has been stated

in the petition and not rebutted by filing any reply by respondent No.3, no development has taken place in the departmental enquiry against the petitioner, in contemplation of which he was placed under suspension. Not even charge sheet has been issued despite lapse of more than 1 & ½ years since the date, suspension order was passed.

3. A perusal of the impugned order shows that the Chief Executive Officer of Janpad Panchayat invoked its power under Rule 4(1) of the Chhattisgarh Panchayat Services (Discipline and Appeal) Rules, 1999 (in short "*the Rules of 1999*")
4. In the case of **Ram Kumar Rajwade Vs. State of Chhattisgarh & Ors.** (WPS No.3005 of 2017 decided on 13.7.2017), this Court had an occasion to examine the statutory scheme of Rules of 1999 with particular reference to power of suspension placed in the hands of the Chief Executive Officer of Panchayats in the matter of suspension of subordinate employees. It was found that unlike the Rule applicable to the Govt. servants where there is a corresponding obligation to issue charge sheet within specified period with consequence of revocation to follow in the absence of issuance of charge sheet within the specified period, under the Rules of 1999, there is no corresponding obligation placed on the authority exercising power of suspension to issue charge sheet and formally institute departmental enquiry to inquire into allegation of misconduct for which the employee was placed under suspension. This Court directed the Govt. also to examine the Rules and to consider making necessary provision in the Rules creating such statutory obligation of issuance of charge sheet within the specified time, as is provided in the Rules relating to suspension in the matter of Govt. servant as it contained in Civil Services (Classification, Control & Appeal) Rules, 1966 (in short "*the Rules of 1966*"). Even in this case, this Court had observed this anomaly in the Rule and required the State counsel, on more than one occasions, to apprise as to what steps have been taken in the matter of providing time limit for issuing the charge sheet where a Panchayats employee is placed under suspension.

It appears that the State, till date, has not come out with any specific provision.

5. It has been settled legal position that suspension is not a penalty and should not be used as a device to penalize the employee for charges which are yet to be proved. Merely because the allegations are serious, it does not legitimize continuance of suspension for long period without any steps taken towards expeditious disposal of disciplinary proceedings. It would be the worst situation where though suspension order is passed, the authority cares not to even institute departmental enquiry by issuance of charge sheet. Non-issuance of charge sheet within a reasonable time, in the absence of there being any satisfactory explanation, may lead to a presumption that the allegation on which an employee was placed under suspension were baseless and without any evidence so much so that even after long period, the authority could not find material to formulate charges and institute departmental enquiry.
6. In the present case, more than 1 & ½ years has elapsed. The authority who issued the suspension order of the petitioner has not been able to institute a departmental enquiry by issuing a charge sheet which should only lead to a presumption that the petitioner is being penalized on certain wild allegations, unsupported by any concrete material reflected in the form of duly constituted charge sheet and the material oral and documentary by which such charges are to be substantiated.
7. Long continuance of suspension has been strongly deprecated by the Supreme Court in its recent judicial pronouncement in the case of **Ajay Kumar Choudhary Vs. Union of India** through its Secretary and Anr. (2015) 7 SCC 291. The consideration relevant in the matter of suspension and its continuance in case where criminal case was instituted were also made applicable in cases where suspension is based on allegation of misconduct though it may not be a case of criminal insinuation against the Govt. employee. This is reflected from following observation of the Supreme Court in the aforesaid decision:

"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 Cr.P.C. 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 contained of the Division Bench in Raghbir 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 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/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."

8. After having so observed, their Lordships in the Supreme Court authoritatively directed to all concern, which constituted a Law under Article 141 of the Constitution of India, 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.”

9. The aforesaid dictum of the Apex Court mandates in clear words against long continuance of suspension unless there are sufficient justification of doing so. Even in a case where, after suspension, the charge sheets are issued, their Lordships felt constrained to observe that even in such case where memorandum of charge is served, a reasoned order must be passed for extension of suspension. This mandate of Law has to be followed not only while exercising the power of suspension but also in continuing such orders.
10. Present case is only an example of one of the worst cases of continuance of suspension order, facilitated by lack of statutory obligation under the Rules to issue charge sheet within a specified period. The petitioner has continued under suspension for more than 1 & ½ years and the authority has conveniently sat over the matter either finding no time to examine the records or having no material to proceed further in the matter. At this juncture, it would be pertinent to place on record, the statement made at the bar by learned counsel for the petitioner that even no criminal case has been registered against the petitioner.
11. This Court is at complete loss as to what considerations prevailed for continuing the petitioner under suspension for such long period for an allegation, which has not seen the light of the day in the form of a charge sheet for such a long period.
12. The interest of justice, therefore, demands that this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India should issue a clear mandamus that the petitioner's suspension shall be revoked forthwith by passing an order within a period of 15 days from the date of receipt of copy of this order.
13. The petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge