

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2695 of 2017

Balmukund Yadav S/o Shri Jagdish Yadav, Aged About 56 Years Occupation Service, Working As Head Master, Government Primary School Padoli, Rang North Dwharpur, Ambikapur, District Surguja R/o Village Dumki, Tahsil Lundra, Thana Dwharpur, District Surguja CG

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of School Education, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh).
2. Collector, Ambikapur, District Surguja, (Chhattisgarh)
3. District Education Officer, Ambikapur, District Surguja, (Chhattisgarh)
4. Block Education Officer, Lundra, Ambikapur, District Surguja, (Chhattisgarh)

---- Respondents

Shri Vinay Pandey, counsel for the petitioner/s.
Shri Satish Gupta, Govt. Advocate for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

24/08/2017

Earlier, time was granted to the State counsel to justify why the petitioner has been kept under suspension for such a long time when the petitioner was not in custody for 48 hours and till date, not even departmental enquiry has been initiated.

2. State counsel prays for further time.
3. Looking to the nature of dispute, I am now inclined to dispose off the matter. By impugned order, the petitioner has been placed under suspension on the ground that on certain allegations, the petitioner has been involved in a criminal case and also detained by the police.
4. The order shows that the proceedings under Section 107 and 116 CrPC were initiated against the petitioner and in connection with that, the petitioner

was placed under suspension. The department has not issued any charge sheet to the petitioner on any alleged misconduct. The proceedings under Section 107 and 116 CrPC are not of such grave nature that an employee should be kept under suspension in the name of pendency of criminal case for such a long period.

5. In the case of **Ajay Kumar Choudhary v. Union of India through its Secretary and anr., (2015) 7 SCC 291**, the issue with regard to long continuance of suspension was considered by the Supreme Court wherein the practice of keeping an employee under suspension for long time was deprecated and following observations were made :-

“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental / disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are

inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial."

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"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 Raghbir 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.”

7. Therefore, in these circumstances, it is proper to direct the District Education Officer to pass appropriate orders in the matter of revocation of suspension in the light of the Supreme Court particularly, keeping in view that there is no charge sheet issued against the petitioner and allegations are not grave at all.

Sd/-

(Manindra Mohan Shrivastava)
Judge