

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5462 of 2017**

Sushri Nirmala Chaturvedi D/o Shri Mehtruram Chaturvedi, Aged About 37 Years Working As Supervisor in Integrated Child Development Project Dondilohara, District Balod, R/o Village Thanaud, Post Anjora, Tahsil & District Durg, Civil And Revenue District Durg, Chhattisgarh.

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary, Women And Child Development Department, Mahanadi Bhavan, New Raipur, District Raipur, Chhattisgarh.
2. Commissioner, Women And Child Development Department, Indrawati Bhavan, Raipur, District Raipur, Chhattisgarh.
3. Collector, Balod, District Balod, Chhattisgarh.
4. District Program Officer, Women And Child Development Department, Balod, District Balod, Chhattisgarh.
5. Project Officer, Integrated Child Development Department, Block Dondilohara, District Balod, Chhattisgarh.

---- **Respondents**

For Petitioner	:	Mr. Manoj Kumar Sinha, Advocate
For State	:	Mr. S.P. Kale, Dy.A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

27.11.2017

Heard.

1. The petitioner is aggrieved not only by the order of suspension as originally passed on 31.01.2017, the grievance is aggravated on account of long continuation of suspension.
2. While granting further time of two weeks on 27.10.2017, it was made clear that no further time would be granted. The case was, however, adjourned on

17.11.2017 at the request of learned counsel for the petitioner. Even now, reply of the State is not filed.

3. However, taking into consideration the nature of relief sought in this petition and the settled legal position, I deem it expedient to finally dispose off the matter.

4. The petitioner was placed under suspension vide order dated 31.01.2017 on a host of charges relating to irregularity in performance of duties. The allegations pertain to irregularity in performance of duties and functions. After suspension, charge-sheet followed on 10.03.2017.

5. Coincidentally, the petitioner also preferred an appeal against the suspension order on the same day i.e. on 10.03.2017 before the Appellate Authority, invoking its statutory remedy of appeal under Rule 23 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. The appeal of the petitioner has remained undecided and the petitioner has continued all along under suspension for the last more than 8 months.

6. Learned counsel for the petitioner would submit that till date, there is no substantial progress in the departmental enquiry and after issuance of charge-sheet, he has not been noticed of any further stage of proceeding in the departmental enquiry.

7. Even though, an order of suspension at its inception may be justified, its continuation must be necessitated by administrative exigency and public interest. In the case of **State of Orissa v. Bimal Kumar Mohanty, AIR 1994 SC 2296**, the Supreme Court held that the object and purpose of suspension is not to punish an employee but only to facilitate departmental enquiry. It was observed thus :

“12. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and 5 1993 Supp (3) SCC 483: 1994 SCC (L&S) 67: (1993) 25 ATC commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid

action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.

8. In a recent judicial pronouncement of the Supreme Court in the case of **Ajay Kumar Choudhary V. Union of India, (2015) 7 SCC 291**, long continuation of suspension was deprecated. Though that was a matter relating to suspension during the pendency of a criminal proceeding, their Lordships in the Supreme Court held that the considerations relevant in criminal cases are applicable to moderate suspension order in cases of departmental enquiry also. It was observed:

“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.”

9. The Lordships expressed their further concern and the obligation of the authorities to consider whether further continuation of suspension would be necessary, at the stage, when the charge-sheet is issued, 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. The authoritative pronouncement of the Hon'ble Supreme Court in the aforesaid case, therefore, clearly obliges the authorities to consider at the stage of issuance of charge-sheet, whether suspension should further continue or not. In terms of the mandate as above, a reasoned order is required to be passed for extension of suspension. This could be done either by incorporating those reasons in the memo of charge-sheet itself or by a separate order while issuing the charge-sheet. I find that despite the decision of the Supreme Court and the direction issued as above, which constitutes law under Article 141 of the Constitution of India, the authorities have not examined this aspect whether further continuation of suspension would be necessary, while issuing charge-sheet. The stage of issuance of charge-sheet would be necessarily a stage when the disciplinary authorities has to apply his mind to all relevant facts and circumstances, gravity of allegations and necessity to continue an employee under suspension and if, upon consideration of all the relevant circumstances, the authority considers the continuation of suspension necessary in the administrative exigency and public interest, a

reasoned order will have to be passed.

11. I would hasten to add that even if the suspension order may have all the justification at the time when it was passed, in the absence of reasons for extension at the time of issuance of charge-sheet, further continuation of suspension may be taken as unjustified, unnecessary and unwarranted in administrative exigency and public interest. There cannot be a straight jacket formula as to what should be those considerations but all that can be said is that the considerations relevant would be those to decide whether it be in administrative exigency and public interest to continue suspension, keeping in view that the object of suspension is not to punish.

12. Learned State counsel submits that in many cases, it may not be conducive to administrative exigency and public interest to reinstate the person at the same place wherefrom he was suspended. In this aspect, this Court in the case of **Bhopal Tande Vs. State of Chhattisgarh and others {W.P.(S) No.2498 of 2015 decided on 10.08.2015}** has settled legal position that upon revocation of suspension, the person is required to be posted at the same place wherefrom he was suspended. But where continuation of the person at that place may not be conducive to administrative interest, nothing prohibits authorities from immediately transferring him after reinstatement, to any other post or assignment.

13. On the peculiar facts and circumstances of the present case, it is found that though the petitioner preferred an appeal against the order of suspension on 10.03.2017, the appeal has also remained undecided. In its very nature, an appeal against the order of suspension must be decided one way or the other at the earliest and it should not be kept pending for months together. Under all circumstances, an appeal against the order of suspension should be decided within a period of 45 days and not beyond the same, for, if the suspension continues, the very purpose and object of filing appeal is frustrated.

14. In the conspectus of the above considerations, statement of law, mandate of the Supreme Court, it has become necessary to issue direction to respondent to consider and pass appropriate order within a period of 30 days to justify, by reasons, why suspension of the petitioner is necessary. If no order is passed within a period of 30 days from the date of receipt of copy of the order by disciplinary

authority, the suspension of the petitioner shall not continue any further and shall stand under revoked automatically. Conversely, in case, there is an order of extension with certain reasons, it may be allowed to continue. Pendency of appeal shall not be impediment for the disciplinary authority to undertake the exercise as directed above.

15. Further the appellate authority is also directed to decide petitioner's appeal within a period of 30 days. The State must consider to issue a circular to all the departments in compliance of the mandate of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary (supra) obliging the authority to pass a reasoned order at the time of issuance of charge-sheet as to why further continuation of suspension is necessary.

16. The petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge