

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 14.07.2017****Delivered on 21.07.2017****Writ Appeal No. 141 of 2017**

Vijay Miri S/o Shri Jagat Ram Miri, Aged About 41 Years Working As Sub Engineer, (Suspended) In The Office Of Janpad Panchayat Sarangarh, District - Raigarh (Chhattisgarh).

---- Appellant**Versus**

1. State Of Chhattisgarh Through : Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, New Mantralaya, District Raipur (Chhattisgarh).
2. The Divisional Commissioner, (Revenue), Bilaspur Division, Bilaspur (Chhattisgarh)
3. The Collector, Raigarh, District Raigarh (Chhattisgarh).
4. Chief Executive Officer, District Panchayat Raigarh, District Raigarh (Chhattisgarh)

---- Respondents

For Appellant	:	Mr. R.K. Kesharwani, Advocate
For Respondent -State	:	Mr. R.K. Gupta, Deputy Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT**Per Sharad Kumar Gupta, Judge**

1. The Appellant has challenged the judgment dated 07-03-2017 passed by the learned Single Judge of this Court dismissing the Writ Petition (S) No. 814 of 2017.
2. In brief, the case of the Appellant is that, he was a Sub-Engineer in the office of Janpad Panchayat, Sarangarh District Raigarh during the relevant time and his

Appointing Authority was Respondent No.2, the Divisional Commissioner, Bilaspur. On 24-06-2016, Respondent No.3 passed the suspension order, marked as Annexure P2 against him with instant effect. Being aggrieved, he filed Writ Petition (S) No. 6487 of 2016, through which he was directed to file an appeal before the competent authority. Subsequently, the Respondent No.2, the Divisional Commissioner, Bilaspur rejected the appeal filed on 23-01-2017, marked as Annexure P1 and affirmed the said order of the Respondent No.3, Collector, Raigarh. Being aggrieved with the said order, the Appellant filed Writ Petition (S) No. 814 of 2017. That was dismissed by the impugned judgment. This appeal is filed challenging that judgment.

3. Shri R.K.Kesharwani, learned counsel for the Appellant argued that the suspension order deserves to be quashed as the authority i.e. Respondent No. 3, who has passed the order, is lower than the Appointing Authority i.e. Respondent No.2. Further, the Respondent No.3 has also not forthwith reported the circumstances in which the suspension order was passed in accordance with the provisions of rule 9(1) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter called as "Rules,1966").
4. Shri R.K.Gupta, learned Deputy Advocate General for State submitted that the Rule 9(1) of the Rules 1966 has been complied substantially. There is no violation of the said Rule and hence, the order so passed is in conformity with the law.
5. We have gone deep down through the records.
6. The provisions of Rule 9(1) of Rules 1966, which is of great importance to settle the dispute, reads as under:-

"9.(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the governor, by general or special order, may place a Government servant under suspension:-

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

[Provided that a Government servant shall invariably be placed under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him]

Provided further that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

7. The suspension order dated 24-06-2016 was reported along with the circumstances to Respondent No.2 on 16-12-2016.
8. The core issue for consideration before us is as to whether the second proviso contained in Rule 9(1) of Rules 1966 is mandatory or directory?
9. The word 'forthwith' is not defined in the Rules, 1966. As per the Black's Law Dictionary, 'forthwith' means immediately - without delay, directly, promptly, within a reasonable time under the circumstance.
10. In **Keshav Neelkanth Joglekar v. The Commissioner of Police Greater Bombay; A.I.R 1957 SC 28**, the Constitution Bench of the Hon'ble Supreme Court considered the word 'forthwith' in context of the Preventive Detention Act and held that it means an act which is done with all reasonable despatch and without avoidable delay.
11. In **Vidyadeb Barma Etc. v. The District Magistrate, Tripura Agartala; A.I.R 1969 SC 323**, the Constitution Bench of the Hon'ble Supreme Court considered the word 'forthwith' in context of the Preventive Detention Act and held that when the statute requires a particular thing to be done 'forthwith' it should be understood as allowing reasonable time for doing it.

12. In **Raymond Synthetics Ltd. v. Union of India; (1992) 2 SCC 255**, Hon'ble Supreme Court has observed that, it is true that the expression 'forthwith' does not necessarily and always means instantaneous. The expression has to be understood in the context of the statute. However, where the statute prescribes the payment of money and the accrual of interest thereon at certain point of time, the expression 'forthwith' must necessarily be understood as immediate or instantaneous so as to avoid any ambiguity or uncertainty.
13. In **Nawalshankar Ishwarlal Dave v. State of Gujarat; 1993 Suppl (3) SCC 754**, it has been laid down that expression 'forthwith' would mean 'as soon as may be', that the action should be performed by the authority with reasonable speed and expedition with a sense of urgency without any unavoidable delay. No hard and fast rule could be laid nor is a particular period prescribed.
14. In **Bhavnagar University v. Palitana Sugar Meal Pvt. Ltd.; 2003 (2) SCC 111**, and **Balwant Singh v. Anand Kumar Sharma; 2003 (3) SCC 433**, it has been observed that when a public authority is required to do a certain thing within specified period, the same is ordinarily directory. It is equally well settled that when consequence for any action on the part of the statutory authority within the specified time is expressly provided, it must be held to be imperative.
15. It is noticeable that no consequence for non-reporting of circumstances forthwith is specified in the second proviso to Rule 9(1) as enumerated in Rule 9(5)(a) of Rules 1966 where the suspension order was made by the authority subordinate to the Appointing Authority. Suspension order issued by a subordinate authority is not made conditional on it being reported to superior authority. The requirement of reporting the fact of suspension is to enable the Appointing Authority to exercise all powers even in relation to suspension order. The effect of suspension order is not made dependent on the reporting of the suspension and the circumstances in

which the order of suspension is made by an authority lower than the appointing authority. Hence, we are of the view that the second proviso to Rule 9(1) of Rules 1966 is directory in nature and not mandatory. On the basis of foregoing facts and circumstances, compliance has been done in the case in hand by Respondent No.3 and delay for sending report is not fatal.

16. On the aforesaid discussion, we are in complete agreement with the well reasoned and detailed judgment of the learned Single Judge, which is in accordance with the spirit of provisions of Rule 9(1) of the Rules 1966.

17. On cornerstone of the aforesaid facts and circumstances, we conclude that no issue has been raised in this writ appeal calling for interference with the judgment of the learned Single Judge.

18. Hence, this writ appeal is dismissed. Both the parties shall bear their own costs.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge