

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (S) No. 814 of 2017****Order Reserved on : 17.02.2017****Order passed on : 07.03.2017**

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 (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: Secretary, Panchayat and Rural Development, Mahanadi Bhawan, New Mantralaya, District Raipur (C.G.)
2. The Divisional Commissioner, Bilaspur Division, Bilaspur (C.G.)
3. The Collector, Raigarh, District Raigarh (C.G.)
4. Chief Executive Officer, District Panchayat, District – Raigarh (C.G.)

---- Respondents

For Petitioners	: Mr. R.K. Kesharwani, Advocate.
For Respondents	: Mr. Ashish Surana, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order [C.A.V.]**

(1) The petitioner is Sub Engineer working in the office of Janpad Panchayat, Sarangarh, District Raigarh and his appointing authority is Divisional Commissioner, Bilaspur.

(2) By order dated 24.06.2016, the Collector in accordance with Rule 9(1) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (henceforth 'Rules, 1966') placed the petitioner under suspension with immediate effect.

(3) The petitioner filed writ petition being Writ Petition (S) No. 6487/2016 challenging the order of suspension. This Court by order dated 30.11.2016 directed the petitioner to prefer appeal before the appellate authority.

(4) In appeal preferred by the petitioner, the appellate authority-Commissioner by its order dated 23.01.2017 rejected the appeal holding that order of suspension has rightly been passed by the Collector.

(5) Feeling aggrieved against the order of Commissioner dismissing his appeal, instant writ petition under Article 226 of the Constitution of India has been filed questioning the same.

(6) Shri R.K. Kesharwani, learned counsel appearing for the petitioner would submit that the petitioner has been placed under suspension by an authority lower than the appointing authority and, therefore, by virtue of second proviso to Rule 9(1) of the Rules, 1966, the authority passing suspension order should have reported to the appointing authority forthwith the circumstances in which the order of

suspension was passed, but that has not been done and it has been done only after the great delay i.e. 16.12.2016, as such the order of suspension is vitiated.

(7) Per contra, learned counsel for the State would submit that second proviso to Section 9(1) of the Rules, 1966 has been complied with substantially and since consequence of no reporting forthwith has not been provided in the Rule like in Rule 5(a) of the Rules, 1966 and, therefore, the learned Commissioner is fully justified in rejecting the appeal filed by the petitioner. He placed reliance upon the judgment of the Supreme Court in the matter of ***Shamrao Vishnu Parulekar and another Vs. The District Magistrate, Thana and others***¹ & ***Rao Mahmood Ahmad Khan through their L.R. Vs. Ranbir Singh & others***² in support of his submissions.

(8) I have heard learned counsel for the parties and considered their rival submissions made herein and also gone through the record with utmost care.

(9) In order to decide the point in dispute raised at the bar it would be apposite to notice Section 9(1) of the Rules of 1966, which states 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

1 1957 S.C. 23 [(s) AIR V 44 C 5 Jan.]

2 1995 Supp (4) SCC 275

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.

(2) to (5) *** *** ***

(10) In the present case, this court is concerned with second proviso to sub-rule (1) of Rule 9 which mandates the authority suspending the government servant and who is lower in rank than the appointing authority to inform the appointing authority '*forthwith*' the circumstances in which order of suspension was made as in this case the suspension was passed by the Collector on 24.06.2016 and information leading to suspension has been sent to the petitioner's appointing authority *i.e.* Development Commissioner on 16.12.2016 and according to the petitioner, such information and circumstances leading to suspension must have been sent *forthwith* without any delay but in the instant case it has been sent after more than five months, therefore the order of suspension is liable to be revoked. On appeal learned Commissioner did not accept the contention of the petitioner. The question for

consideration would be the meaning and import of word '*forthwith*' employed in second proviso to sub-rule (1) of Rule 9.

(11.1) The Black's Law Dictionary – 8th Edition defines the word '*forthwith*' as under:-

“Forthwith:- 1. Immediately – without delay.
2. Directly, promptly, within a reasonable time under the circumstance.”

(11.2) Shorter Oxford English Dictionary – 5th Edition defines as word '*forthwith*' as under:-

1. Alongwith, at the same time.
2. Immediately, at once, without delay.

(12) The Constitution Bench judgement of the Supreme Court in the matter of **Keshav Nilkanth Joglekar v. The Commissioner of Police, Greater Bombay**³ considered the expression '*forthwith*' in context of the Preventive Detention Act and held it means an act which is done with all reasonable dispatch and without avoidable delay and observed as under:-

“4. The word "*forthwith*", it has been observed, is of elastic import. In its literal sense, it might be construed as meaning that the act to be performed forthwith in relation to another should follow it automatically without any interval of time or, as held in some of the American authorities, should be performed at one and the same time as the other. But even in America, the preponderance of judicial opinion does not favour this, construction. In Corpus Juris, Volume 26, Page 998 the position is

thus stated:

"Although the term has received a strict construction, ordinarily it is not to be strictly construed, but should receive a liberal or reasonable construction. Some regard must be had to the nature of the act or thing to be performed and the circumstances of the case."

6. In *Reg. v. The Justice of Worcester* (1839) 7 Dowl P C 789 at p,791: 54 R R 902 at P.903 (B), where the question was as to the meaning of the word '*forthwith*' in S.50 of 6 Will. IV, Colridge, J. observed:

"I agree that this word '*forthwith*' is not to receive a strict construction like the word '*immediately*', so that whatever follows, must be done immediately after that which has been done before. By referring to S. 50, it seems that whatever is to be done under it, ought to be done without any unreasonable delay. I think that the word '*forthwith*' there used, must be considered as having that meaning."

7. The meaning of the word '*immediately*' came up for consideration in *Thompson V. Gibson* (1841) 8M and W 282: 151 E R 1045 at p.1047 holding that it was not to be constructed literally, Lord Abinger C.B. observed:

"If they (acts of Parliament) could be construed literally, consistently with common sense and justice, undoubtedly they ought; and if I could see, upon this act of Parliament, that it was the intention of the legislature that not a single moment's interval should take place before the granting of the certificate. I should think myself bound to defer to that declared intention. But it is admitted that this cannot be its interpretation; we are therefore to see how, consistently with common sense and the principles of justice, the words '*immediately afterwards*' are to be construed.

If they do not mean that it is to be done the very instant afterwards, do they mean within ten minutes, or a quarter of an hour, afterwards? I think we should interpret them to mean, within Such reasonable time as will

exclude the danger of intervening facts operating upon the mind of the judge, so as to disturb the impression made upon it by the evidence in the cause."

In agreeing with this opinion, Alderson B. expressly approved of the decision of Lord Hardwicke in *Rex v. Francis* (A). This construction of the word 'immediately' was adopted in *Page v. Pearce* (1841) 8 M and W.677. at p. 678 : 151 E R 1211 at p. 1212 (D), Lord Abinger C.B. observing:

"It has already been decided, and necessarily so, that the words 'immediately afterwards' in the statute, cannot be construed literally, and if you abandon the literal construction of the words, what can you substitute but 'within a reasonable time?.....'"

In *the Queen V. Justices of Berkshire* (1879) 4 Q. B. D. 469 at p. 471 (E), where the point was as to the meaning of "*forthwith*" in S. 52 of 35 and 36 Vict, Chapter 94, Cockburn C. J. observed:

"The question is substantially one of fact. It is impossible to lay down any hard and fast rules as what is the meaning of the word 'immediately' in all cases. The words 'forthwith' and 'immediately' have the same meaning. They are stronger than the expression 'within a reasonable time', and imply prompt, vigorous action, without any delay, and whether there has been such action in a question of fact, having regard to the circumstances of the particular case".

The same construction has been put on the word "*forthwith*" occurring in contracts. In *Hudson v. Hill*, (1874) 43 L J C P 273 at p. 280 (F) which was a case of charterparty, it was observed at page 280:

"Forthwith" means without unreasonable delay. The difference between undertaking to do something 'forthwith' and within a specified time is familiar to everyone conversant with law. To do a thing 'forthwith' is to do it as soon as is reasonably convenient".

In *Reg. v. Price*, (1853-54) 8 Moo P C 203: 14 E R 78 (G), it was held by the Privy Council that the word 'forthwith' in a bail bond meant within a reasonable time from the service of notice. On these authorities, it may taken, an act which is to

be done forthwith must be, held to have been so done, when it is done with all reasonable despatch and without avoidable delay.

10. We agree that 'forthwith' in S.3(3) cannot mean the same thing as 'as soon as may be' in S.7, and that the former is more peremptory than the latter. The difference between the two expressions lies, in our opinion, is this that while under S.7 the time that is allowed to the authority to send the communication to the detenu is what is reasonably convenient, under S. 3 (3) what is allowed is only the period during which he could not, without any fault of his own, send the report.

Under S.7 the question is whether the time taken for communicating the grounds is reasonably requisite. Under S.3 (3) it is whether the report has been sent at the earliest point of time possible, and when there is an interval of time between the date of the order and the date of the report, what has to be considered is whether the delay in sending the report could have been avoided.”

(13) Yet again, Constitution Bench of Supreme Court in the matter of **Bidya Deb Barma Etc. v. District Magistrate, Tripura, Agartala**⁴ considered the meaning of ‘*forthwith*’ in relation to the Preventive Detention Act and held when the statute requires particular thing to be done ‘*forthwith*’, it should be understood as allowing reasonable time for doing it and relied on **Keshav Nilkanth Joglekar** (supra).

(14) Similar is the meaning given by the Supreme Court in the matter of **Gopal Mandal v. State of West Bengal**⁵ in which it was held pertinently as under:-

“3. The word “forthwith” has been interpreted to mean “as soon as possible; without any delay”. If there is some delay which is reasonably explained, then there is no violation of the mandatory

4 AIR 1969 SC 323

5 (1975) 2 SCC 590

requirement of the law.....”

(15) In the matter of **Raymond Synthetics Ltd. and others v. Union of India and others**⁶ the word ‘*forthwith*’ has been defined by the Supreme Court as under:-

“23. It is true that the expression ‘*forthwith*’ does not necessarily and always mean instantaneous. The expression has to be understood in the context of the statute. Where, however, the statute prescribes the payment of money and the accrual of interest thereon at certain points of time, the expression ‘*forthwith*’ must necessarily be understood to be immediate or instantaneous, so as to avoid any ambiguity or uncertainty. The right accrues or liability arises exactly as prescribed by the statute.....”

(16) Again, in the matter of **Navalshankar Ishwarlal Dave v. State of Gujrat**⁷ the word ‘*forthwith*’ has been defined holding 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.

(17) It is settled principle of law that where a statute imposes a public duty and lays down the manner in which and the time within which the duty shall be performed, injustice or inconvenience resulting from a rigid adherence to the statutory prescription may be a relevant factor in holding such prescriptions only directory. [See Principles of Statutory Interpretation by Justice G. P. Singh, 12th Edition 2010 at

6 (1992) 2 SCC 255

7 1993 Suppl.(3) SCC 754

page 410]

(18) Likewise, a provision fixing a time, within which a public officer or authority has to act in performance of a duty, generally means that the statute considers it reasonable for the officer or authority to act within the said period. The expiry of the period without more confers no right unless the statute by a legal fiction or otherwise confers a right. [See Principles of Statutory Interpretation by Justice G. P. Singh, 12th Edition 2010 at page 410]

(19) It is also well settled 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 inaction on the part of statutory authority within the specified time is expressly provided, it must be held to be imperative. [See **Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd.**⁸ and **Balwant Singh v. Anand Kumar Sharma**⁹].

(20) Applying the principles of law enunciated by their Lordships of the Supreme Court in the aforesaid judgments **Keshav Nilkanth Joglekar** (supra), **Bidya Deb Barma Etc.** (supra), **Gopal Mandal** (supra), **Raymond Synthetics Ltd.** (supra) and **Navalshankar Ishwarlal Dave** (supra) to the relevant rule (proviso to Rule 9(1) of Rules of 1966), it is

⁸ (2003) 2 SCC 111

⁹ (2003) 3 SCC 433

quite vivid that second proviso to Rule 9(1) of the Rules of 1966 obliges the authority suspending the government servant who is lower in rank than the appointing authority to intimate the circumstances in which order of suspension was made to the appointing authority, but the consequences for non-reporting the matter '*forthwith*' to the said authority is not expressly provided in the said Rules and as such the proviso to Rule 9(1) is directory in nature and delay in reporting the matter to the said statutory authority will not entail the revocation of suspension of the government servant.

(21) In the present case, the Collector has placed the petitioner under suspension on 24.6.2016 under Rule 9(1) of the Rules of 1966 and reported the matter to the Development Commissioner, the Appointing Authority of the petitioner on 16.12.2016 as required by second proviso to the said rule and as such circumstances leading to suspension of the petitioner was not reported to the appointing authority '*forthwith*' as required by the second proviso to Rule 9(1) of Rules of 1966 as it was reported after more than five months from the date of suspension, which cannot be said to be reported forthwith but the consequence for not reporting the matter '*forthwith*' has not been provided in Rule 9. It is a case of conscious omission of not providing the consequence by the rule making authority in contra distinction to second proviso to Rule 5(A) which provides

consequence for non-supply of charge-sheet within 90 days from the date of order of suspension, his order of suspension shall stand revoked. No such provision has been incorporated in Rule 9(1) for non-reporting the matter to the Appointing Authority the factum of suspension of the government servant. Thus, the legislative intent is absolutely clear and second proviso to Rule 9(1) is directory in nature and its non-compliance by an authority would not lead to the revocation of suspension of the concerned government servant. The learned Commissioner is absolutely justified in rejecting the aforesaid ground and thereby dismissing the appeal of the petitioner.

(22) No other point was pressed into service.

(23) As an upshot of the aforesaid legal analysis, writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost (s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (S) No. 814 of 2017

Vijay Miri

Versus

State of Chhattisgarh & others.

English

(1) Second proviso to Rule 9(1) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 is directly in nature.

Hindi

(1) छत्तीसगढ़ सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम 1966 के नियम 9(1) का द्वितीय परंतुक निर्देशात्मक प्रकृति का है।