

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1654 of 2017**

Bhagwat Prasad Yadav S/o Late Shri Ramdeen (Bhailal) Yadav, Aged About 49 Years Working As Junior Clerk (Under Suspension), District Cooperative Central Bank, Branch Masturi, District Bilaspur R/o Jorapara, Choubey Colony, Sarkanda, Bilaspur (Chhattisgarh).

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Cooperative Societies, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (Chhattisgarh).
2. Registrar, Cooperative Societies, Indrawati Bhawan, Naya Raipur, Post Office & Police Station, Naya Raipur, District Raipur (Chhattisgarh).
3. Joint Registrar, Cooperative Societies, Bilaspur (Chhattisgarh).
4. Deputy Registrar, Cooperative Societies, Bilaspur (Chhattisgarh).
5. District Cooperative Central Bank Maryadit, Bilaspur, Through The Chief Executive Officer, District Cooperative Central Bank Maryadit, Nehru Chowk, Bilaspur (Chhattisgarh).

---- Respondents

Shri B.D.Guru, counsel for the petitioner/s.
 Shri Sangharsh Pandey, Dy.G.A. for the State.
 Shri Jitendra Shrivastava, counsel for respondent No.5.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****08/05/2017**

By this petition, under Article 226 of the Constitution of India, the petitioner has questioned the continuance of his suspension order dated 12/08/2014 and non-consideration of his prayer for revocation of suspension order.

2. According to learned counsel for the petitioner, on certain allegations of irregularities in the matter of registration and procurement of paddy in the paddy

centre run by the cooperative institution, it was alleged that while the petitioner was working as Junior Clerk and discharging duties of Cashier in the bank, cash withdrawals by the beneficiary were facilitated. The petitioner was placed under suspension vide order dated 12/08/2014. A charge sheet was also issued to the petitioner which culminated in enquiry report in favour of the petitioner and the charges leveled against the petitioner were not found proved. However, a criminal case was also registered by the police against number of employees including the petitioner which has remained in the state of investigation till date without any conclusion. In these circumstances, the petitioner had applied for revocation of suspension but no decision was taken on petitioner's application. Therefore, this petition has been filed.

3. According to learned counsel for the respondent, due to large scale irregularities and *prima facie* case made out in the enquiry that procurement of paddy of crores of rupees was made from ineligible beneficiary, in addition to institution of departmental enquiry, a criminal case was also instituted. Though enquiry report is in favour of the petitioner, nevertheless, a criminal case under crime No.259/2014 was registered in police station – Masturi and therefore, the petitioner was to be placed under suspension. State counsel further submits that initially, investigation has been carried out by the local police but looking to the enormity of the bungling done, investigation was handed over to the special investigation team, which is still holding investigation.

4. From the submissions and documents filed by learned counsel for the parties, it is clear that the petitioner has remained under suspension ever since 12/08/2014, which is more than 2½ years. It is also not in dispute that later on, in the departmental enquiry, enquiry report has also been submitted where both the charges leveled against the petitioner have not been found proved and a finding has been recorded that the petitioner had limited role to play to allow withdrawals on the basis of form submitted before him from the accounts of beneficiary maintained with the bank and it was not the duty of the petitioner to verify the entitlement of the beneficiary.

It appears that though a criminal case was registered way back in the year 2014, till date, the investigation agency has not been able to file charge sheet, much less framing of charges against the petitioner by the Criminal Court.

5. In the aforesaid circumstances, there is considerable force in the submission of learned counsel for the petitioner that suspension could not be continued for indefinite period without any justification to continue the same. It is well settled legal position that suspension is not a punishment or penalty under the Service Rules. At times, employees are suspended due to gravity of allegations in order to ensure that employees are not able to interfere with collection of incriminating evidence and may not be in a position to destroy incriminating evidence available in the records of the office, in connection with which, he is alleged to have committed misconduct. The administrative necessity may require that he should not be allowed to discharge the functions of the office and that for sometime, it is necessary to suspend him to keep him away from direct discharge, functions of duty, access to records etc. In criminal cases, employees are placed under suspension, when they are arrested and unable to perform their duties and also because of the nature and gravity of allegations against the employee. But then, the suspension cannot be continued indefinitely. Though an order of suspension, when it passed, may have all the justifications, in course of time, developments may render continuance of suspension arbitrary, unwarranted and punitive in nature. A suspension order, whether issued on account of institution of departmental enquiry or a criminal case, cannot be continued for a long time without periodical review of the same. If suspension order is allowed to continue for a long period, without even ensuring that it is reviewed periodically, it may partake the nature of punishment, which is not the object of suspension.

6. In the case of **Ajay Kumar Choudhary v. Union of India through its Secretary and anr., (2015) 7 SCC 291**, practice of keeping an employee under suspension without periodical review for indefinite period has been seriously discussed by Their Lordships in the Supreme Court expressing thus –

“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."

7. There is no reason why the considerations placed in the matter of continuance of suspension in a departmental enquiry should not moderate suspension orders in cases where suspension is being continued on account of institution of criminal case. If long suspension, without any justification in a departmental enquiry, either because charge sheet has not been served or that enquiry has remained indefinitely pending and delayed for reasons not attributable to the delinquent employee or that enquiry report has ended in favour of the employee, could be a compelling reason to review the suspension order, to my mind, long continuance of criminal case, without any material progress also

should be a relevant consideration for periodical review of an order of suspension. Where investigation remains in that stage, without culmination in filing of charge sheet before the Criminal Court within a reasonable period, it would be difficult for any reasonable mind to justify continuance of suspension on the pretext of pendency of a criminal case. At times, seriousness and gravity of allegations in a report against him, by itself, may be a justification for placing an employee under suspension. For example, an employee who is charged of serious and heinous offence or charges of misappropriation of public fund or other kind of serious financial irregularities causing huge financial loss to the institution and public fund or in cases of charges of corruption, in all such cases, there has to be a limit of period for which, an employee could be placed under suspension. Two years is a long period. If an employee like the petitioner has been subjected to departmental enquiry and criminal proceedings both and the departmental action has culminated in an enquiry report in favour of the delinquent employee and charge sheet has not been filed in the criminal case for more than two years, it would be very strong circumstance in favour of the delinquent employee for consideration of his case for revocation of suspension. The petitioner has remained under suspension for more than two years. The enquiry report in the departmental enquiry has ended in his exoneration. The special investigation team has not been able to crystalize any criminal case and submit charge sheet under Section 173 CrPC before the Criminal Court till date. These circumstances warranted review of petitioner's suspension. Reasonably speaking, whether or not there is any specific provision for periodical review of order of suspension, it is an essential concomitant of Article 14 of the Constitution of India that the employer, who has placed the employee under suspension, periodically reviews the order of suspension. Ordinarily speaking, six months period would be long enough to require periodical review by the employer as to whether suspension order should be continued or it should be revoked. Even in a case, period of six months have not elapsed, if subsequent development indicates that the allegation leveled against the employee does not appear to be of much substance or that the employee has been exonerated either at the departmental level or in any judicial proceedings, an immediate review of suspension order becomes imperative as requirement of just and fair treatment. The petitioner herein suffered long suspension because the employer did not feel obliged under the law to undertake periodical review of petitioner's suspension in

the interval of six months to justify, it being public employment, that the suspension should be reviewed when the enquiry report in departmental enquiry ended in favour of the petitioner and the police could not file charge sheet in the criminal case till date.

8. In view of above consideration, the competent authority of the petitioner is directed to take up for consideration petitioner's case for review as to whether it is at all imperative at this stage, to continue him under suspension when enquiry report has ended in his favour and criminal case has not landed in the Criminal Court much less framing of charges for commission of any offence.

9. The authority shall consider the case of the petitioner in the light of the observations which have been made by this Court hereinabove and pass appropriate orders within a period of 30 days from the date of receipt of copy of this order.

10. With the said observations, this petition is finally disposed off.

Sd/-

(Manindra Mohan Shrivastava)
Judge