

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2900 of 2019

Rajendra Kumar Gilhare S/o Lakhan Lal Gilhare, Aged About 52 Years, Working As Assistant Grade III At Office Of The District Mining Officer, R/o Near Small Railway Crossing Purena, Police Station Telibandha, Civil And Revenue District Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Mining Resources, Mantralaya Mahanadi Bhawan Atal Nagar, District Raipur, Chhattisgarh
2. The Director, Geology And Mining Chhattisgarh, Block IV, 2nd Floor, Indrawati Bhawan, Atal Nagar, District Raipur, Chhattisgarh
3. The Collector (Mining Branch) Raipur, District Raipur, Chhattisgarh
4. District Mining Officer, Raipur, District Raipur, Chhattisgarh
5. Station House Officer Of Police Station, Civil Lines Raipur, District Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Surfaraj Khan, Advocate
For State	:	Shri Ishan Verma, P.L.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

16/04/2019

1. The grievance of the petitioner in the instant case is that the petitioner was placed under suspension vide order dated 27.11.2018. The reason for placing the petitioner under suspension was that he was involved in a criminal case for the offence

punishable under Sections 467, 468, 471 & 120B of IPC and had remained in custody for a period of 48 hours.

2. Contention of the counsel for the petitioner is that since about 5 months period have lapsed from the date the order of suspension was passed and that the criminal case which has been initiated against the petitioner stands stayed by the High Court in WPCR No. 160/19 vide order dated 13.03.2019, there is an uncertainty so far as the early conclusion of the criminal case is concerned and the department therefore should reconsider whether the petitioner should be continued under suspension or not for a prolonged period. Counsel for the petitioner relied upon the judgment of the Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India through its Secretary and Anr.** reported in **(2015) 7 SCC 291**.
3. State counsel, on the other hand, submits that since the petitioner is involved in an offence of a serious misconduct, it would not be advisable for revoking the suspension of petitioner at this juncture particularly when he is facing criminal trial for the said act on his part. State counsel further tried to justify the continuation of suspension for the reason that in case the petitioner's suspension order is revoked, there is all likelihood of the petitioner tampering with the records and evidences which are otherwise maintained with the respondents.
4. Having heard the contentions put forth on either side and on perusal of the record, it would be trite at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of **Ajay Kumar**

Choudhary (supra) wherein in paragraph No.21 the Hon'ble Supreme Court has held as under:-

“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 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.”

5. Hence, it would be in the interest of justice if the present writ petition is disposed of with a direction to respondent no.2 to reconsider the aspect of continuing the petitioner under suspension any further. What is expected from the respondents is that an appropriate decision be taken whether there is any requirement of continuing with suspension of the petitioner when the criminal case initiated against the petitioner stands stayed by this Court in WPCR No.160/19. What is also to be appreciated by the officer is whether in the event of the suspension of the petitioner stands revoked,

there is any likelihood of tampering of records and evidences against him.

6. In view of the same, the writ petition stands disposed of directing respondent no.2 to pass a suitable order in the light of the decision rendered by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** and the discussion held by this Court in the proceeding paragraphs. It is expected that respondents 2 shall take an early decision in respect of the petitioner preferably within a period of 3 months from the date of receipt of copy of this order. It shall be the responsibility of the petitioner to apprise respondent no.2 so far as the order passed by this Court is concerned.

**Sd/-
(P. Sam Koshy)
Judge**

Khatai