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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.454 of 2019**

(Arising out of order dated 21.08.2019 passed in Writ Petition (S) No.6342 of 2019 by the learned Single Judge)

Dhananjay Prasad Sarthi S/o Late Shri P.R. Sarthi Aged About 52 Years
Occupation Service, Posted as Block Education Officer at Block Education
Officer, Gariyaband, District Gariyaband Chhattisgarh. R/o Village and
Post Jatri, Police Station Pussour, District Raigarh Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh through Secretary, Department of School Education, Mahanadi Bhavan, Mantralaya, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh.
2. The Director Directorate of Public Instructions, Indravati Bhawan, Block No. 3, 1st Floor, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh.
3. District Education Officer, Gariyaband, District Gariyaband Chhattisgarh.
4. Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi. India.

---- Respondents

For Appellant	: Shri Surfaraj Khan, Advocate
For Respondents/State	: Shri Gagan Tiwari, Dy. Govt. Advocate
For Respondent No.4	: Shri Rajeev Shrivastava, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgement on Board****P. R. Ramachandra Menon, Chief Justice****11.11.2019**

1. Challenge is against the order dated 21.08.2019 passed by the learned Single Judge in Writ Petition (S) No.6342 of 2019 declining to interfere with the suspension of the Appellant/writ Petitioner ordered by the Governmental authorities on 12.04.2019 and communicated on 22.04.2019 (Annexure P/1).

2. The contention raised by the Appellant/writ Petitioner in the writ petition was that no order of suspension could have been passed in view of the Model Code of Conduct notified by the Election Commission which had already come into operation on 10.03.2019, which was lifted only by 23.05.2019. It is also pointed out that the suspension is not warranted under any circumstance with regard to the issue involved and it has been passed just mechanically, only to harass the Appellant/writ Petitioner, who was working as 'Block Education Officer' in the service of the Respondents. The learned Single Judge observed that it was not a fit case to interfere, more so since the suspension was never to be treated as punishment and it was expressed that the Appellant/writ Petitioner would be given a fair and reasonable opportunity, in case the department intended to proceed with the disciplinary proceedings. The writ Petitioner was also set at liberty to file statutory appeal against the order of suspension.
3. Shri Surfaraj Khan, the learned counsel for the Appellant submits that Annexure P/1 order of suspension is *per se* wrong and illegal in all respects. It at all the Appellant was to be suspended, it had to be routed through the Election Commission and no instruction from Election Commission was obtained.
4. Shri Gagan Tiwari, the learned counsel representing the State submits that, in view of the Model Code of Conduct, the order of suspension was never given effect to and it was implemented only after lifting the Code of Conduct on 23.05.2019.

5. Shri Rajeev Shrivastava, the learned standing counsel representing the Election Commission submits that the Appellant/writ Petitioner chose to approach this Court challenging the suspension order dated 12.04.2019 issued by the State Government and the consequential order dated 22.04.2019 issued by the Collector, only on 19.08.2019 (the date of filing the writ petition), which was much after lifting the Code of Conduct on 23.05.2019. It was in the said circumstance that interference was declined by the learned Single Judge, which does not require a re-look in this appeal.
6. Learned counsel for the Appellant however submits that, when the Respondent-State submits that the suspension order was given effect only after lifting the Model Code of Conduct, the Appellant has made to serve the Election Commission and has virtually served during the relevant period; despite which salary has not been released to him so far. In fact, the Appellant has been treated as under suspension from the date of the order passed by the authorities concerned. It is the submission of the Appellant that, since the Model Code of Conduct was in operation and since the Government says that they have given effect to the order of suspension only after lifting the Code of Conduct, the natural consequence is that the Appellant ought to have been deemed as continuing in service till the date on which it was sought to be given effect to, which will make him eligible to get salary and other benefits till that date.

7. The learned counsel representing the Government/Department submits that a modified/corrected order would be issued by the competent authority with regard to the suspension, giving effect from the immediate date after lifting the Code of Conduct and the matter would be proceeded in accordance with law, with regard to the alleged misconduct.
8. We record the above submission and make it clear that the corrected order of suspension shall be passed as expeditiously as possible; at any rate, within two weeks from the date of receipt of a copy of this verdict.
9. The writ appeal stands disposed off.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge