

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 548 of 2021**

Radheshyam Diwakar S/o Shri Anjor Das Aged About 50 Years Block Education Officer, R/o Pathalgaon, District- Jashpur, Chhattisgarh, Present Address- Vivekanand Colony Mopka, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary Of Education, Mantralaya, Naya Raipur, Chhattisgarh
2. Director Department Of Education Directorate Of Public Instruction, Raipur, District- Raipur, Chhattisgarh
3. Collector Jashpur District- Jashpur, Chhattisgarh
4. District Education Officer Jashpur, District- Jashpur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Amit Kumar Chaki, Advocate
For State	:	Mr. Kapil Maini, Panel Lawyer

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

22/02/2021

1. The grievance of the petitioner in the present writ petition is the prolonged keeping of the petitioner under suspension. The petitioner in the instant case has been placed under suspension on the alleged ground of committing serious misconduct and the order of suspension is dated 16.10.2018.
2. According to the petitioner, though more than two years have lapsed, the respondents have not been able to conduct departmental enquiry, which was initiated against the petitioner and for the alleged misconduct he was also implicated in a criminal case, where again there is no substantial development that has taken place, therefore now the suspension of the petitioner needs to be revoked keeping in

mind the judgment of the Hon'ble Supreme Court in the case of **“Ajay Kumar Choudhary v. Union of India, through its Secretary & Another” (2015) 7 SCC 291.**

3. State counsel at this juncture submits that the petitioner since he has already approached the authorities in this regard by way of a representation (Annexure P/11), the same be decided on merits.
4. Considering the facts and circumstances of the case more particularly the fact that the petitioner has been placed under suspension for more than two years now and there being no substantial progress both in the criminal case as also in the departmental enquiry, the case of the petitioner needs consideration in terms of 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/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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 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. Accordingly, the writ petition stands disposed of directing the respondent No.1 to take an appropriate decision in the case of the petitioner, whether in the light of the judgment of the Hon'ble Supreme Court, the petitioner needs to be further kept under suspension or not. Let a decision be taken by the respondents in this regard at the earliest preferably within a period of 60 days from the date of receipt of the copy of this order.
6. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved