

(2023) 06 CHH CK 0033
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 3772 Of 20 23

Ku. Vandana Kujur

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 22-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 167(2)

Citation : (2023) 06 CHH CK 0033

Hon'ble Judges : Parth Prateem Sahu, J

Bench : Single Bench

Advocate : Reena Singh, Sunita Jain

Final Decision : Disposed Of

Judgement

1. Heard.

2. Learned counsel for petitioner submits that petitioner who is holding the post of Patwari was put under suspension vide order dated 27.10.2022 in contemplation of Departmental Enquiry. She fairly submitted that Departmental Enquiry is still pending, however, even after lapse of 90 days Respondent No. 3 who put the petitioner under suspension has not reviewed the order of suspension as observed by Hon'ble Supreme Court in case of Ajay Kumar Chaudhary vs. Union of India, reported in (2015) 7 SCC 291. Aggrieved by the inaction of Respondent no. 3 of not reviewing the order of suspension, petitioner submitted a representation on 15.02.2023, however, till date the said representation is also not decided, therefore, direction be issued to Respondent no. 3 to decide the pending representation of petitioner at the earliest.

3. Learned State counsel opposes the submission of counsel for petitioner and submits that as the petitioner is facing departmental enquiry, he has been put under suspension. She however submits that as the petitioner is not pressing this writ petition on merits and only seeking direction to be issued to Respondent no. 3 to decide the pending representation, she is having no objection.

4. I have heard learned counsel for the parties.

5. The contention of counsel for petitioner is that petitioner was put under suspension vide order dated 27.10.2022, as of now about 08 months have already been passed from the date of suspension. As submitted by learned counsel for petitioner that Respondent no. 3 who put the petitioner under suspension has not reviewed the order of suspension of petitioner nor passed any order thereafter. Hon'ble Supreme Court in the case of Ajay Kumar Choudhary (supra) has held as under:

"20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghbir Singh vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

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.”

6. In the aforementioned decision of Hon’ble Supreme Court, it is held that the Government servant cannot be kept under suspension for inordinate period beyond 90 days. Petitioner has also submitted representation which is till date not decided, as submitted by counsel for petitioner.

7. In view of the aforementioned facts and circumstances of the case, decision of Hon’ble Supreme Court in the case of Ajay Kumar Choudhary (supra), I find it appropriate to dispose of this writ petition permitting the petitioner to submit a fresh representation before Respondent no.3 raising all the grounds as pleaded in this writ petition and if such a representation is submitted by petitioner, Respondent no. 3 shall consider and decide the same, in accordance with law, expeditiously preferably within a period of three weeks from the date of receipt of representation, keeping in mind the aforementioned decision of Hon’ble Supreme Court in the case of Ajay Kumar Choudhary (supra).

8. With the aforesaid observation and direction, writ petition is disposed of.

Certified copy as per rules.