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**(2018) 07 CHH CK 0230**

**Chhattisgarh High Court**

**Case No:** Writ Petition (S) No. 1535 Of 2018

Pramod Shukla

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

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**Date of Decision:** July 19, 2018

**Acts Referred:**

- Chhattisgarh Municipal Service (Executive) Rules, 1973 - Rule 36
- Chhattisgarh Civil Services (Classification, Control And Appeal) Rules, 1966 - Rule 9, 9(5)(b)

**Hon'ble Judges:** Sharad Kumar Gupta, J

**Bench:** Single Bench

**Advocate:** Sarfaraj Khan, Dheeraj Wankhede

**Final Decision:** Partly Allowed

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### **Judgement**

Sharad Kumar Gupta, J

1. In this writ petition, challenge is levied to the impugned order dated 13-11-2017 vide Annexure P-1 and impugned suspension order dated 24-5-2017

vide Annexure P-2.

2. It is admitted by the respondent No.1 that the petitioner was Chief Municipal Officer and posted at Municipal Council, Kumhari. He was put under

suspension vide Annexure P-2 under Rule 36 of the Chhattisgarh Municipal Service (Executive) Rules, 1973 (in brevity, 'Rules of 1973'). He had

submitted representations on 28-8-2017 and thereafter on 7-9-2017 vide Annexure P-4. He preferred writ petition before this Court bearing WPS No.

4802/2017 wherein an order Annexure P-5 dated 14.09.2017 was passed. The said writ petition was disposed of by order Annexure P-6 dated 10-10-

2017 with a direction to the respondent No. 1 to consider revocation of the petitioner's suspension in view of the judicial pronouncement of the

Supreme Court in the case of Ajay Kumar Choudhary -v- Union of India reported in [(2015) 7 SCC 291] and take a decision within a period of 3

weeks. He again submitted a representation Annexure P-7 dated 26-10-2017. He preferred a Contempt Petition (C) No. 722/2017. The respondent

No.1 further admitted that he had passed impugned order Annexure P-1. The said contempt proceeding was closed with liberty to the petitioner to

challenge the Annexure P-1.

3. In brief, case of the petitioner is that the Rules of 1973 do not prescribe suspension period, when delinquent employee be reinstated, right of appeal.

During the pendency of the aforesaid writ petition, the respondent No. 1 could not demonstrate whether any charge sheet is served upon him during

the period of 90 days from the date of his suspension. No charge sheet was served upon him within a period of 90 days from the date of his

suspension. He is at the verge of superannuation. His representation Annexure P-7 has not been decided in the light of the aforesaid judicial precedent

laid down by Hon'ble Supreme Court in the case of Ajay Kumar Choudhary (supra).

4. In brief, case of the respondent No. 1 is that due to unauthorized absence from duty, irregularities and illegalities in financial matters making e-

payment unauthorizedly, the petitioner was suspended. He was absent from his duties, thus the charge sheet was affixed in his house on 7-7-2017

within a period of 90 days from the date of his suspension and panchnama is a part of Annexure R-3. He had duly considered the representation

Annexure P-7 in accordance with the observations made in the order Annexure P-6.

5. Notice has not been issued to respondent No.2.

6. Being aggrieved by Annexure P-1 and Annexure P-2, the petitioner has preferred this writ petition.

7. Mr. Sarfaraj Khan, counsel for the petitioner vehemently argued that the respondent No. 1 fails to demonstrate whether any charge sheet is served

upon him during the period of 90 days from the date of his suspension. He is about to attain the age of superannuation. His representation Annexure

P-7 has not been decided by the authority concerned in view of the judicial precedent laid down by Hon'ble Supreme Court in the case of Ajay Kumar

Choudhary (supra). Thus, Annexures P-1 & P-2 may be quashed.

8. Per contra, Mr. Dheeraj Wankhede, Govt. Advocate appearing for the respondent No.1 argued that the petitioner has been put under suspension

due to unauthorized absence from his duty, as he committed irregularities and illegalities in the financial matters and e- payment made unauthorizedly.

Respondent No.1 had duly considered the representation Annexure P-7 in the light of the order Annexure P- 6, thus, the petition may be dismissed.

9. It would be pertinent to mention the provisions of Rule 36 of the Rules of 1973 which reads thus :-

36. Suspension pending disciplinary proceedings. - (1) If having regard to the nature of charges and the circumstances in any case, the [appointing

authority or the disciplinary authority] is satisfied that it is necessary or desirable to place, under suspension the member of the service against whom

disciplinary proceeding is contemplated or is pending, it may subject to the provisions of sub-section (2) of Section 86 of the Act, pass an order placing

him under suspension. (2) A member of the service detained in police custody, whether on a criminal charge or otherwise for a period longer than

forty- eight hours, shall be deemed to have been suspended with effect from the date of detention under this rule.

(3) A member of service against whom a criminal charge is pending may at the discretion of the appointing authority, be placed under suspension until

the termination of the proceedings, if the charges are connected with his duties as a municipal servant or is likely to embrace him in the discharge of

his duties in the Municipality or involves moral turpitude.

10. It would also be pertinent to mention the provisions of Rule 9 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966

(in brevity 'CCA Rules, 1966') which reads thus :-

9(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf

by the Governor by general or special order, may place a government servant under suspension -

(a) where a disciplinary proceeding against him is contemplated or is pending or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

Provided that a Government servant shall invariably be placed under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him;

Provided further that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority -

(a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty eight hours;

(b) with effect from the date of his conviction, if in the event of conviction for an offence, he is sanctioned to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation. - The period of forty eight hours referred to in Clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment if any, shall be taken into account.

(2-a) Where a Govt. servant is placed under suspension under Clause (a) of Sub-rule (1), the order of suspension shall contain the reasons for making such order and where it proposed to hold an enquiry against such Govt. servant under Rule 14, a copy of articles of charges, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained shall be issued or caused to be issued by the disciplinary authority to such Govt. servant as required by Sub- rule (4) of Rule 16 within a period of 45 days from the date of order of suspension :

Provided that where the disciplinary authority is the State Govt., the copy of charges and other documents mentioned above shall be issued or caused to be issued to such Govt. servant within a period of 90 days from the date of order of suspension.

(2-b) Where the disciplinary authority fails to issue to the Govt. servant, a copy of the charges and other document referred to in Sub-rule (2-a) within

the period of 45 days, the disciplinary authority shall, before expiry of the said period, obtain orders in writing of the State Govt. for extension of the said period of suspension :

Provided that the period of suspension shall in no case be enhanced beyond as period of 90 days from the date of the order of suspension.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Govt. servant under suspension, is set aside in

appeal or review under these rules and the same is remitted for further inquiry or action or with any other directions, the order of his suspension shall

be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in

force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Govt. Servant is set aside or declared or rendered

void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to

hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the

Govt. servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal,

removal or compulsory retirement and shall continue to remain under suspension until further orders.

5(a) An order of suspension made or deemed to have been made under this rule, shall continue to remain in force until it is modified or revoked by the

authority competent to do so :

Provided that the order of suspension shall stand revoked on expiry of the period of forty five days from the date or order of suspension in case of

copy of charges and other documents referred to in Sub-rule (2-a) are not issued to such Govt. servant by the disciplinary authority (if it is not the

State Govt.) without obtaining the orders of the State Govt. for extension of the period for issue of the said documents, as required under Sub- rule (2-

b).

Provided further that the order of suspension shall stand revoked on expiry of the period of 90 days from the date of order of suspension, in case the

copy of charges and other documents referred to in sub-rule (2-a) are not issued to such Government servant.

(b) In respect of a Government servant, whose orders of suspension stand revoked in accordance with the first or second proviso of clause (a) the

authority competent may, if it considers expedient so to do, place him under suspension after a copy of charges and other documents, as required by

sub-rule (4) of Rule 14, have been issued to him.

(c) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or

otherwise) and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to

place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under

suspension until the termination of all or any of such proceedings.

(d) An order of suspension made or deemed to have been made under this Rule may at any time be modified or revoked by the authority which made

or is deemed to have made the order or by any authority to which that authority is subordinate:

Provided that an order of suspension made under the first proviso to sub-rule (1) of Rule 9 shall not be revoked except by an order of the Government

made for reasons to be recorded.

11. In the matter of Ajay Kumar Choudhary (supra), Their Lordships of Hon'ble Supreme Court have observed in para No.21 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 person concerned 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.

12. From the aforesaid provisions of Rules of 1973, CCA Rules, 1966 and the aforesaid judicial precedent laid down by the Hon'ble Supreme Court in the matter of Ajay Kumar Choudhary (supra), following circumstances emerge :-

(a) Where a disciplinary proceeding against a government servant is contemplated or is pending, memorandum of charges/charge-sheet shall be

served or caused to be served by the disciplinary authority to such Government servant within a period of 45 days from the date of order of

suspension. But if the disciplinary authority fails to issue memorandum of charges/charge-sheet to the government servant within a period of 45 days,

then the disciplinary authority shall before expiration of the said period obtain order in writing from the State Government for extension of the said

period of suspension; the period of suspension shall not in any case be enhanced beyond the period of 90 days from the date of order of suspension;

(b) Where the disciplinary authority is the State Government or High Court, the memorandum of charges /charge-sheet shall be served or caused to

be served to such government servant within a period of 90 days from the date of order of suspension;

(c) Where within a period of 45 days or such extended period, or 90 days, as the case may be, the memorandum of charges/charge-sheet is not

served to such government servant then the order of suspension stands revoked after expiration of either 45 days or 90 days, as the case may be;

(d) Where order of suspension stands revoked on the ground that before expiration of 45 days or the extended period, or 90 days, as the case may be,

charge sheet is not filed, then the competent authority may, if it considers expedient so to do, place him under suspension after the service of

memorandum of charges/charge-sheet to such government servant;

(e) An order of suspension made or deemed to have been made shall be deemed to remain in force unless it is modified or revoked by the competent

authority;

(f) If within the prescribed period the memorandum of the charges/charge-sheet is not served on the government servant then the competent authority

is bound to pass a reasoned order for extension of suspension.

13. In the case in hand the disciplinary authority is the State Government regarding disciplinary proceeding against the petitioner. Thus, the disciplinary

authority was bound to serve the memorandum of charges/ charge-sheet to the petitioner within 90 days from the date of the suspension of the

petitioner i.e. 24.05.2017.

14. First and foremost question for consideration before this Court is that whether the memorandum of charges / charge-sheet had been served to the

petitioner within 90 days from the date of his suspension.

15. Though in the order Annexure P-5 and Annexure P-6, it has not been mentioned that the respondent No.1 had intimated that memorandum of

charges / charge-sheet had been served to the petitioner within 90 days from the date of his suspension, but this fact is not sufficient to hold that at the

time of the passing of orders Annexure P-5 and Annexure P-6, memorandum of charges / charge-sheet was not served to the petitioner.

16. There is no material available on the record on strength of which it could be said that alleged Panchanama dated 07.07.2017 is not believable.

17. Looking to the above mentioned facts and circumstances, this Court believes on alleged panchanama dated 07.07.2017.

18. Looking to the above mentioned facts and circumstances, this Court finds that memorandum of charges / charge-sheet had been served on the

petitioner within 90 days from the date of his suspension order.

19. Second question for consideration before this Court is that, whether even when the service of the memorandum of charges / charge-sheet on the



petitioner was made within 90 days from his suspension order, the disciplinary authority was required to pass a reasoned order for the extension of his suspension or not ?

20. The Government Advocate Mr Dheeraj Wankhede pointed out that clause 7 of the impugned order Annexure P-1 itself shows that the disciplinary authority had passed a reasoned order for the extension of the suspension of the petitioner in view of the aforesaid judicial precedent laid down by Apex Court in Ajay Kumar Choudhary Vs. Union of India (supra).

21. Mr. Wankhede to buttress his submission relied on judgment of co- ordinate bench of this Court dated 4.7.2018 passed in WPS No. 4374 of 2018 (Vinod Kumar Yadav Vs. State of Chhattisgarh and others), which observed in para No.5 as under:-

5. On perusal of the record it is found that the respondents have passed the impugned order dated 28.05.2018 in a detailed manner and have considered the entire factual matrix against the petitioner and found that his track record is not so good and that he is already involved in a criminal case with serious charges of irregularities and misappropriations being committed by him in the course of the discharge of his duties. Moreover the petitioner was also arrested and put to jail for a period of more than 6 months and considering all these if in the opinion of the respondents it is not proper at this juncture to revoke the suspension order, the same cannot be said to be in any manner violative to the guidelines given by the Hon'ble Supreme Court in the case of ""Ajay Kumar Choudhary"" (supra). What was required was that the authorities to reconsider, whether it is any further necessary to continue the employee under suspension or not. If the authorities have considered that objectively and for the reasons spelt out in the order they do not find it proper at this juncture to revoke the suspension order, the same cannot be found fault with and the impugned order cannot be held to be bad in law.

22. It would be noteworthy to extract the clause 7 of the Annexure P-1 which is as under :-

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23. This is very clear from the contents of clause 7 of Annexure P-1 that the disciplinary authority had decided that suspension order of the petitioner

shall not be deemed revoked because the charge-sheet has been served to him within 90 days from the date of his suspension. From plain reading of said Clause 7, it appears that it deals with the non-revocation of suspension order on account of filing of the charge-sheet within 90 days from the date of his suspension. Clause 7 does not denote that suspension period was extended for such reasons which were just and proper. For sake of the arguments if it is deemed that by the Annexure P-1 the suspension period of the petitioner was extended on account of the reason that charge-sheet was served on him within 90 days from the date of his suspension, though this Court does not find so, then the said reason is actually no reason in the eye of law for extension of suspension period because for extending the suspension period, the filing of the charge-sheet is condition precedent.

24. There is no other order on record on strength of which it could be said that disciplinary authority had extended the suspension period of the petitioner after filing of the memorandum of charges / charge-sheet by the reasoned order.

25. In the case in hand the factual matrix is different from the case of Vinod Kumar Yadav (supra). In the case in hand the petitioner was neither arrested nor put to jail for any period, no charge-sheet has been filed against him regarding any criminal case, though these grounds were considered by the competent authority in Vinod Kumar Yadav's case for not revoking his suspension order. Thus, the facts of the present case are entirely distinguishable from that of Vinod Kumar's case.

26. Looking to the above mentioned facts and circumstances of the case, this Court is not impressed with the aforesaid submission of Mr. Dhiraj Wankhede, Govt. Advocate and respondent No.1 does not get any help from the aforesaid judicial precedent laid down in Vinod Kumar Yadav's case and this Court finds that after the service of the memorandum of charges / charge-sheet to the petitioner within 90 days from his suspension order is made, the disciplinary authority had not passed a reasoned order for the extension of his suspension, in view of the aforesaid judicial precedent laid down by the Supreme Court in Ajay Kumar Choudhary (supra).

27. Considering the above mentioned facts and circumstances of the case, material placed on record, aforesaid judicial precedent pronounced in Ajay

Kumar Choudhary (supra), this Court finds that impugned order Annexure P-1, suspension of the petitioner after filing of the memorandum of charges/charge-sheet are suffering from illegality. In other words, the impugned order Annexure P-1 and suspension of the petitioner after filing of the memorandum of charges / charge-sheet deserve to be and are hereby quashed. Respondent No. 1 is directed to reinstate the petitioner forthwith.

Needless to say that it is open for the respondent No.1, that if he considers it expedient so to do, may pass fresh reasoned order under Rule 9 (5)(b) of the Rules, 1966, place him under suspension after his reinstatement.

28. Accordingly, the writ petition is partly allowed.

29. The petitioner and the respondents shall bear their own costs.