

WP-6979-2016

(VIJAY SINGH SOLANKI Vs THE STATE OF MADHYA PRADESH)

29-09-2016

Shri J.P. Mishra with Shri A.K.Nirankari, learned counsel for the petitioner.
Shri Praveen Newaskar, learned Government Advocate for respondents/State.

By consent of parties, matter is finally heard.

This petition under Article 226 of the Constitution of India has been filed against the order of suspension dated 6.12.2014 passed by Chief Executive Officer, Zila Panchayat, Morena on account of registration of offence at Crime No.449/2013 under Sections 419, 420, 467, 468, 471, 120-B of IPC read with section 3/4 of Madhya Pradesh Manyata Prapt Pariksha Adhiniyam, 1937 and also on account of his detention in the said offence. The petitioner further prayed that now the period of more than 20 months has elapsed after passing the order of suspension, however, it may be revoked because continuation of his suspension is not desirable and in fair administration of justice.

The issue with respect to revocation of suspension in the context of Rule 9 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 has been considered in detail in **W.P.No.1395/2016 (Dr. Rajkumar Dubey Vs. State of M.P. and others)**, decided on **21.9.2016**, in which this Court has issued the following directions:

"After hearing learned counsel for the parties and on perusal of provision or rule 9 of the Rules of 1966, it is apparent that the competent authority and disciplinary authority may place a person under suspension in case of criminal offence is under inquiry or trial against him, as per amended proviso the Government Servant may invariably be placed under suspension if challan has been filed, after sanction of prosecution against him. On perusal of the order of suspension, it reveals that action has not been taken against

the petitioner under the provision of Prevention of Corruption Act. However, it may come within the purview of amended provisions of rule 9 of the Rules of 1966, which came into force in the year 2007. Thus, looking to the proviso, it reveals that either on registration of offence or in continuation of trial, a person can be suspended, but such power is not unfettered, and based upon discretion which ought to be exercised judiciously by the authority competent or by appellate authority.

In the case of **P.L. Shah (supra)** the order of suspension and non-payment of subsistence allowance was under challenge before the Supreme Court. The Apex Court while dealing the said issue has observed that if a government servant is not responsible for the delay or even if he is responsible to some extent but primarily not responsible for it, however, it is for the Government to reconsider whether the order of suspension should be continued or the subsistence allowance should be varied to his advantage or not. The decision on the said question, no doubt depends upon several factors relevant to the case. In the case of **Suresh Kumar Purohit (supra)**, learned Single Bench of this Court has considered the scope of Rule 9 and its proviso in the context of filing of challan against a government servant, and to place him under suspension invariably. The Court observed that the said proviso is not mandatory. The order of suspension can be passed when the competent authority came to the conclusion that there are sufficient reason for keeping an employee under suspension. It is said that there ought to be a proper application of mind and satisfaction of the authority to the fact that suspension is called for till finalization of criminal case. It is required to be appreciated by the competent authority that continuation of the petitioner under suspension is necessary in a case where investigation by CBI is undergoing since last about one year. Let, all these aspects requires consideration by the State Government with respect to continuation of the order of suspension of the petitioner or to keep him under suspension in public interest. However, all these issues may be gone into by the State Government with respect to desirability to keep the petitioner under suspension or to revoke the same.

In view of the foregoing discussion and the legal position as enunciated by the Hon'ble Apex Court, it would be appropriate to direct that if petitioner submits a fresh

representation alongwith certified copy of this order within a period of three weeks from the date of its receipt seeking revocation of his suspension to the State Government then such application shall be considered and decided as expeditiously as possible within a period of two months from the date of its receipt. It is needless to observe that while passing the order, petitioner be afforded an opportunity of hearing. It is made clear here that if the Government is of the opinion that continuation of the petitioner under suspension is not desirable, they may pass an appropriate order revoking the same, however, all the questions are left open to be adjudged by the State Government.

In view of the foregoing, this petition stands disposed of."

In the facts of the present case, the issue involved in this case is similar to the aforesaid directions, however, applying the said direction mutatis mutandis in this case this writ petition is also disposed of. It is directed that on submitting a representation by the petitioner within a period of three weeks from the date of receipt of certified copy of this order and on filing application seeking revocation, it shall be considered and decided by the competent authority in the light of the judgment referred hereinabove and to pass appropriate order within a period of two months from the date of receipt of such representation.

In view of the foregoing, this petition stands disposed of.

Certified copy as per rules.

(J.K. MAHESHWARI)
JUDGE

**(SUSHRUT ARVIND
DHARMADHIKARI)**
JUDGE