

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 12 of 2018

Date of Order: 28.05.2019

Teiborlang Sunn

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. V.G.K. Kynta, Sr. Adv. with
Ms. V. Mawlieh, Adv.

For the Respondent(s) : Mr. K. Khan, Sr. GA with
Mr. S.K. Hassan, GA

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| i) | Whether approved for reporting in
Law journals etc. | Yes |
| ii) | Whether approved for publication
in press: | No |

1) The brief facts of the case is that the petitioner a Junior Engineer in the office of the Executive Engineer, (Electrical) P.H.E. Government of Meghalaya was placed under suspension on 12th March, 2013 on the ground of his being implicated in Mawlai P.S. Case No. 18 (3) 2013 U/S 8 of Protection of Children from Sexual Offences Act, 2012 r/w Section 364 I.P.C. and departmental proceedings were contemplated to be initiated against him. However, since 12th March, 2013 no departmental proceeding was initiated by the respondents. The petitioner had filed several representations for lifting the suspension

order, however, with no result. Being aggrieved with the unduly prolonged period of suspension, the petitioner is before this court by way of the instant writ petition.

2) Mr. V.G.K. Kynta, learned senior counsel assisted by Ms. V. Mawlieh, learned counsel on behalf of the petitioner, submits that the ground for suspension was with regard to his involvement in Mawlai P.S. Case No. 18 (3) 2013 U/S 8 of Protection of Children from Sexual Offences Act, 2012 r/w Section 364 I.P.C. Consequent to the F.I.R. a charge sheet was submitted by the Inquiry Officer on 23rd May, 2013 and the petitioner was alleged to have committed an offence under Section 17 of the POCSO Act which is for abetment.

3) The learned counsel for the petitioner submits that one of the main and primary accused who was charge sheeted under Section 8 of the POCSO Act was also suspended during his period of custody but was subsequently reinstated thereafter. He further submits that however in the case of the petitioner, though he was charge sheeted with a lesser offence, he is still under suspension till date. He submits that no review of his suspension, has been carried out by the respondents, as provided under FR 51 clause (2) (b) clause (ii) (c) and also submits that, Rule 6 sub-rule (2) and the proviso to sub-rule (2) of the Meghalaya Services (Discipline and Appeal) 2011 does not mandate such a prolonged suspension. He further submits that there was no Departmental Proceeding against the petitioner except for an enquiry, which in his submission does not qualify as a Departmental Enquiry, and that the fact that no Departmental Proceeding was ever initiated against the writ petitioner is substantiated by the affidavit of the respondents at Para-10. He also submits that, in fact the State respondents themselves had made a request to the Government for lifting of the suspension order.

4) The learned counsel for the petitioner has cited and placed reliance on the cases of *Ajay Kumar Choudhary vs. Union of India & Anr.* reported in (2015) 7 SCC 291, Civil Appeal No. 8427 & 8428 in

the case of *State of Tamilnadu vs. Promod Kumar, IPS & Anr. , State Bank of India & Ors. vs Soupramaniane* reported in *2019 SCC online SC 608* and also on the case of *Mangali vs. Chhakkilal & Ors.* reported in *AIR 1963 All 527*. Learned senior counsel submits that these judgments relate to suspension, on the point that the same should not be unnecessarily prolonged, and also draws this courts' attention to the tests as mentioned in these cases, for judging offences involving moral turpitude in relation to continuance of suspension. He lastly submits that the notification dated 12th March, 2013 (Annexure 2) being bad in law and facts, be set aside and quashed.

5) Mr. K. Khan, learned senior GA assisted by Mr. S.K. Hassan, learned GA for the State respondents submits that the impugned order of suspension dated 12th March, 2013, clearly states that the same was inflicted, pending Department proceedings and pending receipt of Inquiry report from the Superintendent of Police, East Khasi Hills, Shillong. He contends that, at Para-10 of the affidavit filed on 13th March, 2018 as submitted by the learned counsel for the petitioner, it is a fact that it is stated that no departmental proceeding has been initiated, but he submits it was due to the reason that Show Cause under Rule 9 of the Meghalaya Services (Discipline & Appeal) Rules had been served to the petitioner and thereafter the respondent No. 3 (Chief Engineer) had taken up the matter with the Government for revoking of the suspension order as is evident from letter dated 19th November, 2014 (Annexure V of the affidavit-in-opposition). However, he states that the Government advised that reinstatement does not arise as the case is pending and that the Departmental Proceedings may proceed. As such, he submits, in view of the direction of the Government, though the writ petitioner had filed representation, the suspension order was not reviewed nor revoked.

6) Mr. K. Khan further submits that thereafter an enquiry was conducted and though a report was submitted with certain findings, it was observed therein that any concrete decision would be taken only after the outcome of the Court case as directed by the Government. He

further submits that on bare reading of the suspension order the same would reflect that it was conditional on pending Departmental Proceedings and a report the Police. He further submits that since the suspension order, is confined to and made conditional to a pending enquiry, as also the pleadings in the writ petition which are only confined to the aspects of suspension with a challenge to the impugned order, the matter should be adjudicated only in the light of these pleadings and submissions.

7) He closes his submissions by submitting that as the Departmental Proceedings have been concluded and Inquiry report has been submitted, the writ petition can be closed with a direction to the respondents to examine/review the same and consider reinstatement of the petitioner into service.

8) I have heard learned counsel for the parties.

9) The basic grievance of the petitioner is with the prolonged period of suspension, which has now stretched to over six years. Suspension as provided in Rule 6 of the Meghalaya Services (Discipline & Appeal) Rules, provides as follows:-

“6. Suspension – (1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Governor in that behalf may place a Government servant under suspension.

(a) Where a disciplinary proceeding against him is contemplated or is pending, or

(b) Where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(c) Where a case against him in respect of any criminal offence involving moral turpitude is under investigation or trial;

Provided 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 who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of such

detention, by an order of the Appointing Authority and shall remain under suspension until further orders.

Provided that where the detention is made on account of any charge not connected with his position as a Government servant or continuance in Office is not likely to embarrass the Government or the Government servant in the discharge of his duties or the charge does not involve moral turpitude, the Appointing Authority may vacate the suspension order made or deemed to have been made when he is released on bail or is not otherwise in custody or imprisonment.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or with any other directions, the order or 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 Government 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; besides to hold a further inquiry against him on the allegations of which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government 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.

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings 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 termination or all or any such proceedings.

Provided that 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.”

10) The proviso to Section 6 clause (2) provides that the Appointing Authority may vacate the suspension order made or deemed to have been made when he is released on bail or is not otherwise in custody or imprisonment.

11) In the present case, the writ petitioner was placed under suspension by the impugned order dated 12th March, 2013 (Annexure-2) which is reproduced herein below:-

***“Government of Meghalaya
Office of the Chief Engineer, PHE
Meghalaya, Shillong***

No. CE/PHE/Estt/3389/2010/20

Dated 12th March 2013

Notification

Pending Departmental proceeding and pending receipt of Inquiry report from the Superintendent of Police, East Khasi Hills, Shillong, Sri. TeiborlangSunn, Junior Engineer (Electrical) O/o the Executive Engineer (PHE) Electrical Division, Shillong is hereby placed under Suspension in connection with Mawlai PS Case No. 18(3) 2013 U/S 8 of Protection of Children from Sexual Offences Act, 2012 R/W Sec. 364 IPC with immediate effect and until further order.

***(S.K. Sunn)
Chief Engineer, PHE
Meghalaya, Shillong***

Memo. No. CE/PHE/Estt/3389/2010/20 ‘A’

Dated 12th March 2013

Copy to :-

- 1. The Superintendent of Police, East Khasi Hills, Shillong with reference to his letter No. CB/SR/13/338, Dated 11.03.2013.***
- 2. The Under Secretary to the Govt. of Meghalaya, PHE Department, Meghalaya, Shillong for information.***
- 3. The Accountant General (A&E) Meghalaya, Shillong for information.***
- 4. The Executive Engineer (PHE) Electrical Division, Shillong with a request to inform the incumbent concerned immediately.***
- 5. Sri. TeiborlangSunn, Junior Engineer (Elect) O/o the Executive Engineer (PHE) Electrical Division, Shillong.***
- 6. Personal File of the person concerned.***
- 7. Office Order Book.***

***Chief Administrative Officer
cum Vigilance Officer (PHE)
O/o Chief Engineer, PHE
Meghalaya, Shillong”***

12) As submitted by the learned senior GA for the State respondents, on a plain reading of the impugned order of suspension the same reflects that the suspension was made conditional to the pending Departmental Proceedings and receipt of Inquiry report from the Superintendent of Police. As such, the continuance of the period of suspension of the petitioner should have been taken up for consideration or reviewed on completion of a Departmental Proceeding.

13) In the course of hearing, Mr. K. Khan, learned senior GA for the State respondents by way of an additional affidavit had brought on record the Inquiry report which however is undated. The only fact that can be discerned therefrom, is that the same was made after receipt of the show cause from the petitioner.

14) I have perused the Inquiry report. Though an averment has been made that it is a regular Departmental Proceeding, the report does not reflect the manner and method, as to how the same was conducted, or whether any set procedure was adopted. Inference can only be drawn that the Inquiry was conducted during pendency of the writ application before this Court, in view of the pointed statement made in the initial affidavit at Para-10, wherein it is categorically stated that “*no Departmental Proceedings have been initiated against the petitioner*”. At the final hearing stage however, the Inquiry report was placed before this Court by way of an additional affidavit.

15) As the said inquiry is not under challenge, and the only question raised is with regard to the legality of the prolonged suspension, this Court will confine itself to the justifiability of the prolonged suspension and whether in view of the pendency of criminal trial, the petitioner deserves to be reinstated without going into other aspects such as the moral turpitude factor and culpability of the petitioner in this regard.

16) In the instant case, prolonged suspension of the petitioner in my opinion is to be examined against the backdrop of the order of suspension, pendency of criminal trial and pending Departmental

Proceedings. The impugned order as noted earlier is conditional and as such it stands to reason that at the culmination of the Departmental Proceedings or receipt of report from the Superintendent of Police which has been called for, the suspension of the petitioner should have been reviewed by the respondents. On the second point of pending criminal proceedings, it is also noted by the averments and submissions that the case has since been charge sheeted and the trial is still continuing. As held in the case of *Ajay Kumar Choudhary vs. Union of India & Anr.* reported in (2015) 7 SCC 291, the Hon'ble Supreme Court has laid down in Paras 20 & 21 as follows:-

*“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 Code of Criminal procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond a 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 [Raghubir Singh vs. State of Bihar](#), 1986 (4) SCC 481, and more so of the Constitution Bench in *Abdul Rehman Antulay Vs. R.S Nayak* (1992) 1 SCC 225, 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 enquiries 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/charge-sheet 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/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 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.”

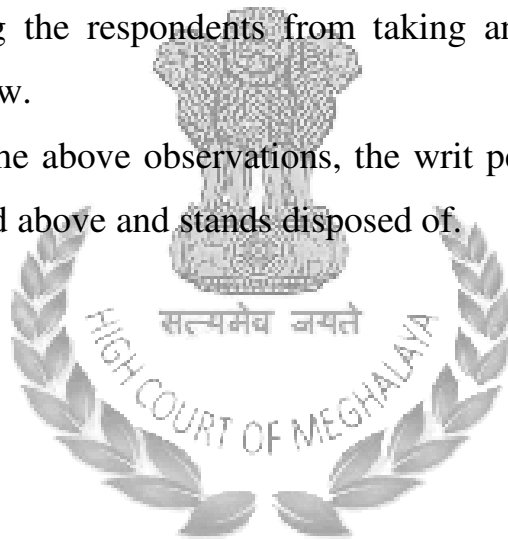
17) By the said judgment it is postulated that a suspension order should not extend beyond three months subject to other conditions such as filing of charge sheet etc., and if charge sheet has been filed, a reasoned order must be passed to justify the extension of suspension. As such, pendency of a criminal trial will not automatically render a person ineligible to reinstatement in service. With regard to the Departmental Proceedings, notwithstanding the duration that he has been kept under suspension, the enquiry as conducted and report as submitted though not under challenge cannot come within the meaning, or within the four corners of a duly conducted Departmental Proceedings.

18) Though the inquiry as observed cannot be termed to be an inquiry as per law, the only fact that remains, is that an exercise had been conducted and as such, it was incumbent upon the respondents to take a call on the same, and review the suspension of the petitioner.

19) However, without going into any other aspects, this Court by confining itself to the impugned order and taking into consideration the subsequent developments that has culminated in the Inquiry report, finds that the life of the impugned order under challenge, expired with the submission of the Inquiry report. As such, the petitioner is entitled to be considered for re-instatement into service notwithstanding the pendency and the stage of the criminal proceedings.

20) Accordingly it is directed that the respondents are to immediately consider re-instatement of the petitioner into service, inasmuch as, the life of the impugned order, has since expired. The entire exercise is to be completed within a period of eight weeks from the date of receipt of a copy of this order. However, this direction is being passed without restraining the respondents from taking any further action in accordance with law.

21) With the above observations, the writ petition is allowed to the extent indicated above and stands disposed of.



JUDGE

Meghalaya
28.05.2019
"V. Lyndem PS"