

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4630 of 2015

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1. Jai Kumar Ram son of Late Garib Ram; Resident of Village-Bakaur, Post Office-Bakaur, Police Station- Supaul, District- Supaul.

.... Petitioner/s

Versus

1. State Election Commission, Bihar Through Its Secretary, Patna
2. The State Election Commissioner, Bihar, Patna.
3. The District Magistrate cum district election Officer (Panchayat) Supaul.
4. Sri Binod Ram, Father's Name not known Resident of Village- Sihe, Post Office- Bakar, Police Station- Supaul, District- Supaul.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gajanan Arun
Mr. Amrendra Narayan Rai
For the Respondent State: Mr. Rajeev Lochan, AC to SC11
For the State Election
Commission : Mr. Amit Shrivastava
Mr. Girish Pandey

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 13-07-2015

Annexure-3 is the order passed by the State Election Commission, Bihar, in Case No. 09/2014, decided on 27.2.2015. By virtue of this adjudication, petitioner stands disqualified to hold the post of a Mukhiya of Gram Panchayat Bakaur, in the district of Supaul. The reason why the petitioner incurred disqualification under section 125(Ka)(1) and (3) of the Bihar Panchayat Raj Act, 2006 is that prior to the election on the post of a Mukhiya, petitioner was a home guard. The finding is that he was very much in service and employment of the State at the time when he contested the election

and, therefore, he earned disqualification.

Counsel for the petitioner submits that the finding is erroneous. According to him, petitioner had tendered his resignation w.e.f. 1.3.2011 and had stopped working. Tendering of resignation amounts to severance of relationship with the State. Therefore, the action of disqualifying him on the finding contrary to the above fact is required to be interfered with.

It is also the stand of the counsel for the petitioner that the payment or remuneration which he received from the State was an advance payment for the month of March and for which petitioner cannot be said to have received remuneration voluntarily. Even the amount was remitted into his account.

Such submission of the counsel for the petitioner does not merit consideration because that plea was taken before the State Election Commission. The State Election Commission has relied on the evidence provided by the Commandant that after tendering resignation petitioner continued to shoulder the responsibility and duty at the place of his posting and he had voluntarily accepted remuneration for the period in question. The findings being what they are, coupled with the fact this is said to be the reason for non-acceptance of resignation of the petitioner, if not, no decision on the resignation.

With a categorical findings of fact on the conduct of the petitioner who not only continued to work as also accepted the remuneration from the State after resignation will surely bring him under the ambit of the provision, leading to his disqualification and the declaration contained in Annexure-1.

Even though petitioner was not entitled to hold the office in question but because of delay in such adjudication he has already held the office for more than four and half years. Petitioner should be more than happy for the perks and privilege he has already enjoyed even though he should have been shown the door at the shortest possible opportunity.

No interference therefore is warranted with the decision in question. Writ application is dismissed.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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