

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.1781 of 2015

Vijay Jamnik, S/o L.A. Jamnik, aged about 51 years, R/o D.C. Road, Ambikapur, Police Station & Post Ambikapur, Civil & Revenue District Surguja, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur, Chhattisgarh.
2. Collector Cum District Election Officer (Local Election), Civil and Revenue District Balrampur – Ramanujganj, Chhattisgarh.
3. Superintending Engineer, Shyam Barnai Project Circle, Ambikapur, Civil & Revenue District Surguja, Chhattisgarh.
4. Secretary, Chhattisgarh State Election Commission, Raipur, Civil and Revenue District Raipur, Chhattisgarh.
5. Commissioner, Chhattisgarh State Election Commission, Raipur, Civil & Revenue District Raipur, Chhattisgarh.

---- Respondents

For Petitioner: Mr. Manoj Paranjpe, Advocate.

For Respondents No.1 to 3/State:
Ms. Astha Shukla, Panel Lawyer.

For Respondents No.4 & 5: Mr. Pramod Kumar Verma, Senior Advocate with Mr. Virendra Verma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/11/2015

1. The neat question that emanates for consideration is whether the District Election Officer (Local Election) is empowered under Rule 27-A of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 (for short 'the Niyam, 1995') to place officer(s) on deemed deputation under suspension and whether the officer assigned the duty in relation to an election (local) would be continued to be on such deemed deputation even after declaration of result of election?
2. The facts shorn of unnecessary details requisite to judge the correctness of the impugned order are as under: -
3. The petitioner at the relevant point of time was holding the substantive post of Assistant Engineer and was also officiating the post of Executive Engineer, Water Resources Division, Balrampur. By order dated 10-1-2015, the District Returning Officer (Local Election) / Collector passed an order appointing the petitioner as officer-in-charge for printing of ballot papers for Panchayat Local Elections, 2015 and he was directed to remain present for training on 12-1-2015 in the Office of the District Returning Officer (Local Election), Balrampur which he could not comply leading to passing of the order dated

28-1-2015 by the respondent No.2 placing the petitioner under suspension in exercise of power conferred under Section 27-A of the Niyam, 1995 after finding the petitioner's reply unsatisfactory given to him vide Annexure R-3 dated 22-1-2015. The election was notified on 21-12-2014 and result of election was declared on 7-2-2015 and thereafter, the District Returning Officer on 12-3-2015 issued charge-sheet against the petitioner for holding departmental enquiry for the alleged misconduct.

4. The petitioner firstly filed reply to the departmental enquiry and also for revocation of suspension, finding no positive response, he has filed this writ petition questioning the order of suspension issued by respondent No.2 and the charge-sheet followed by departmental enquiry on the ground that the District Election Officer (Local Election) has no jurisdiction and authority either to place him under suspension or to initiate departmental enquiry against him, as under Rule 27-A of the Niyam, 1995, control, superintendence and discipline vests with the Commission i.e. the State Election Commission constituted under Article 243K of the Constitution of India. Therefore, the order of suspension followed by departmental enquiry deserves to be quashed.

5. The State of Chhattisgarh / respondents No.1 to 3 has filed reply opposing the writ petition holding that the petitioner has alternative remedy of filing appeal before the appellate authority and the petitioner has failed to perform his duty that too the election duty, therefore, he has been placed under suspension which is not required to be interfered with in exercise of jurisdiction conferred under Article 226 of the Constitution of India.
6. Respondents No.4 and 5 / Chhattisgarh State Election Commission have also filed reply stating *inter alia* that the petitioner was on deemed deputation from the date of election notification on 31-12-2014 till the declaration of result and, therefore, the order impugned is in accordance with law and no interference is called for in exercise of jurisdiction vested in this Court under Article 226 of the Constitution of India.
7. Mr. Manoj Paranjpe, learned counsel appearing for the petitioner, would vehemently submit that from the date of notification of election i.e. 31-12-2014, the petitioner was on deemed deputation with the Commission as defined in Section 27-A of the Niyam, 1995 and that 'Commission' is defined under Rule 2 (c) of the Niyam, 1995 i.e. Chhattisgarh State Election Commission and therefore the

Collector cum District Election Officer (Local Election) had no authority and jurisdiction to pass the order of suspension suspending the petitioner from the said post. Elaborating his submission, he would further submit that deemed deputation of the petitioner came to an end on 7-2-2015 after result of the local election was declared and even then the District Election Officer/Collector charge-sheeted him on 12-3-2015 by instituting departmental inquiry which is also equally without jurisdiction and *non est* in law. Therefore, the orders Annexures P-1 and P-2 deserve to be quashed.

8. Ms. Astha Shukla, learned Panel Lawyer for the State/ respondents No. 1 to 3 would submit that the order passed by the District Election Officer who has exercised the power under Rule 27-A of the Niyam, 1995 as the petitioner was in deemed deputation is in accordance with law and no interference is called for in exercise of writ jurisdiction and as such, the writ petition deserves to be dismissed.

9. Mr. Pramod Kumar Verma, learned Senior Advocate for respondents No.4 and 5, would also support the impugned order passed by the District Election Officer placing the petitioner under suspension and issuing charge sheet to

hold departmental enquiry against him.

10. I have heard learned counsel for the parties and also considered the rival submissions made therein and gone through the record with utmost circumspection.

11. In order to consider the challenge made to the impugned order of suspension dated 21-8-2015 by the District Election Officer and issuance of charge sheet, it would be appropriate to notice the provisions contained in Rules 27 and 27-A of the Niyam, 1995.

“27. Control of District Election Officers.—The Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officers and all other persons appointed in accordance with these rules shall, within the over all direction and control of the Commission, work under the control of District Election Officer.

27-A. Returning Officer, Presiding Officer, etc. deemed to be on deputation to Election Commission.—The Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer and any other Officer appointed under this Chapter for the conduct of any election shall be deemed to be on deputation to the Commission for the period commencing on and from the date of notice of election and ending with the date of declaration of the results of such election and such officers shall be under the control, superintendence and discipline of the Commission during that period.”

12. A meaningful reading of the abovesaid provisions would show that the Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer, and any other

officer appointed under Chapter V of the Niyam, 1995 shall be deemed to be on deputation to the Commission for the period commencing on and from the date of notice of election and ending with the date of declaration of the result of such election and such officers shall be under the control, superintendence and discipline of the Commission during that period.

13. The word 'Commission' has been defined in Rule 2(c) of the Niyam, 1995 which says that Commission means the State Election Commission constituted under Article 243K of the Constitution and the Chhattisgarh State Election Commission has been constituted under Article 243K of the Constitution of India.

14. It is not in dispute that the District Election Officer / Collector passed an order dated 10-1-2015 appointing the petitioner to work as Officer-in-charge for printing of ballot papers with regard to Panchayat Elections on 10-1-2015 and he would fall within the category of “any other officer” within the meaning of Rule 27-A of the Niyam, 1995. By virtue of that rule, from the date of notification of election i.e. 31-12-2014 till the date of declaration of result i.e. 7-2-2015, the petitioner was on deemed deputation under the control, superintendence and discipline of duly constituted

Commission i.e. the Chhattisgarh State Election Commission. Therefore, the authority and jurisdiction to take disciplinary action under Rule 27-A of the Niyam, 1995 against all the officers including the petitioner who were on deemed deputation, is vested with the Chhattisgarh State Election Commission. It is also not in dispute and nothing has been brought on record in this respect to demonstrate that the State Election Commission has delegated the power to the District Election Officer to take disciplinary action which is vested in the Commission. Therefore, in the considered opinion of this Court, in absence of due delegation of power by the State Election Commission to the District Election Officer (Local Election)-cum-Collector to take disciplinary action, the District Election Officer / Collector has no jurisdiction and authority to place the petitioner under suspension on the basis of his deemed deputation by virtue of Rule 27-A of the Niyam, 1995, and, as such, the order passed by the District Election Officer placing the petitioner under suspension is without jurisdiction and without authority of law.

15. The issue raised herein is no longer *res-integra* and stands conclusively decided by the Division Bench of Madhya Pradesh High Court in **Umesh Singh Yadav v. Collector/District Returning Officer, Balaghat and**

Others¹ in which the District Returning Officer exercising the power under Section 28-A of the Representation of the People Act, 1951 which is *pari-materia* provision to the provision contained in Rule 27-A of the Niyam, 1995 placed the petitioner therein on suspension, the Division Bench of the Madhya Pradesh High Court, on consideration has held that disciplinary power having been vested with the Election Commission during the election, the District Returning Officer was not competent to place the petitioner under suspension during election and held in para 6 as under:

“6. ..On a plain reading of the above provisions, it is clear that the authority to take disciplinary action is vested only with Election Commission and during the period of election...”

16. The aforesaid decision has been followed by the Madhya

Pradesh High Court in **S.K. Tripathi v. State of Madhya**

Pradesh and others² with approval holding as under:

“9....What has been stated by the Division Bench is that the power vests in the Election Commission for taking action against the incumbents who are working during the election and deemed to be on duty with the Election Commission. That is the ratio of the said decision. I have said so because in paragraph 6 of the decision, the Division Bench has expressed the view that the power of superintendence, control and discipline is only conferred on the Election Commission in

1 1992 MPLJ 173

2 2009 (3) MPHT 504

respect of various officers working during election. The term “only” is of immense significance....”

17. In **Steel Authority of India, Successor of Bokaro Steel Limited v. Presiding Officer, Labour Court at Bokaro Steel City, Dhanbad, and another**³, Their Lordships of the Supreme Court have held that if a particular officer has not been authorized under the approved Rules, then the charge-sheet served and Enquiry Committee constituted by such officer being unauthorized and order passed is invalid.

18. Applying the law laid down in the above-stated judgment to the facts of the case in hand, it is vivid that the order of suspension passed by the District Election Officer exercising power under Rule 27-A of the Niyam, 1995 is without jurisdiction and without authority of law as under that provision, only the Chhattisgarh State Election Commission has jurisdiction to take disciplinary action against the officers on deemed deputation by virtue of Rule 27-A of the Niyam, 1995 and thereby the order of the District Election Officer/Collector placing the petitioner under suspension is assailable and it deserves to be quashed.

19. The aforesaid determination leads me to consider the next

3 (1980) 3 SCC 734

question as to whether the further institution of departmental inquiry and issuance of charge-sheet by memo dated 12-3-2015 by the District Election Officer is valid in law?

20. Apart from the fact that what has already been held that the Collector had no jurisdiction to take disciplinary action against the petitioner during the election, there is further one additional reason for not upholding the order directing institution of departmental inquiry, as deemed deputation in relation of election duty to election would come to an end on the date of declaration of result of such election thus, the result having been declared on 7-2-2015, deemed deputation of the petitioner had already come to an end on the date that is 12-3-2015 when the order impugned relating to institution of departmental enquiry came to be passed. Thus, the order of the District Election Officer suffers from jurisdictional error in instituting departmental enquiry against the petitioner as such, the same is without jurisdiction and without authority of law which cannot be sustained.

21. As a fallout and consequence of the aforesaid decision, the order passed by the Collector-cum-District Election Officer placing the petitioner under suspension and thereafter

instituting disciplinary proceeding by issuing charge-sheet both are in teeth of and hit by Rule 27-A of the Niyam, 1995 being without jurisdiction and without authority of law. Accordingly, the order dated 28-1-2015 (Annexure P-1) and the order dated 12-3-2015 (Annexure P-2) both are quashed.

22. The writ petition is allowed to the extent indicated herein-above. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

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1. State of Chhattisgarh, Through Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur, Chhattisgarh.
2. Collector Cum District Election Officer (Local Election), Civil and Revenue District Balrampur – Ramanujganj, Chhattisgarh.
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5. Commissioner, Chhattisgarh State Election Commission, Raipur, Civil & Revenue District Raipur, Chhattisgarh.

---- Respondents

HEAD NOTE

District Election Officer/Collector has no jurisdiction to place an officer on deemed deputation (Assistant Engineer), on suspension.

जिला निर्वाचन अधिकारी/ कलेक्टर को प्रतिनियुक्ति में मान लिये गये अधिकारी (सहायक अभियंता) को निलंबित करने का अधिकार नहीं है ।