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HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 8061 of 2018**

Kalam Singh Nareti S/o Late Shri Raisu Ram Nareti, Aged About 44 Years, Working As A Forester, Range Office - Durgukondal, Forest Division - Bhanupratappur, East, District Uttar Baster, Kanker, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Forest, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Collector And District Returning Officer, Uttar Baster, Kanker District Uttar Baster, Kanker, Chhattisgarh
3. Chief Conservator Of Forest, Uttar Baster, Kanker, District Uttar Baster, Kanker, Chhattisgarh
4. Sub Divisional Officer (Revenue) And Assistant Returning Officer Bhanupratappur, District Uttar Baster, Kanker Chhattisgarh
5. Divisional Forest Officer, Forest Zone - Durgukondal, Bhanupratappur, District Uttar, Baster Kanker, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Shobhit Koshta, Advocate
For Respondent/State	:	Ms. Sunita Jain, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****06/12/2018**

The challenge in the present writ petition is to the order of suspension dated 10.11.2018 Annexure P-7 passed by the Collector/District Returning Officer North Bastar, Kanker whereby the petitioner has been placed under suspension invoking Rule-9 of

Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as CCA Rules).

2. The petitioner primarily contested the impugned order on the ground of competency of the authority who has issued the same. Contention of the counsel for the petitioner is that the impugned order of suspension has been issued on 10.11.2018 and the officer who has issued the suspension order is the District Returning Officer. He submits that the petitioner substantively is an employee of the Forest Department and holds the post of Forester and the alleged misconduct is of 08.08.2018 when the notification for election duties had not been published. Therefore, the alleged misconduct, if any should have been taken note by the Disciplinary Authority of the petitioner. According to the petitioner, the notification for election programmes was published on 6th of October, 2018 and thereafter the services of the petitioner were placed under election duty. Meanwhile, respondent no.2 has placed the petitioner under suspension. According to the petitioner, once when the election programme had been notified and thereafter if at all if the petitioner had to be suspended or a disciplinary action had to be initiated, it could be done only by the Election Commission and not by the District Returning Officer. He refers to the provisions of Section 28A of the Representation of the People Act, 1951 in this regard.

3. State counsel, on the contrary, opposing the petition submits that the impugned order does not warrant interference at this juncture for the reason that the impugned order clearly refers to the reason under which the petitioner has been placed under suspension. Moreover under Rule -9 the Collector has been notified to place an employee of Class III and Class IV posts under suspension and therefore, it cannot be said to be without jurisdiction.

4. Having heard the contentions put forth on either side and on perusal of the record it would be relevant at this juncture to refer to the provisions of Rule 28 A of the Act of 1951 which for ready reference is reproduced hereinunder:

“28A. 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 Part, and any police officer designated for the time being by the State government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.”

5. At this juncture it would also be relevant to refer to the judgment of the Madhya Pradesh High Court rendered in this regard on similar facts in 1992 M.P.L.J. 173 (Umesh Singh Yadav Vs. collector/District Returning Officer Balaghat and others). The Division Bench of Madhya Pradesh High Court in the said case while deciding a similar issue where the concerned employee of the Rajya Van Vikas Nigam Limited was placed under suspension by the Returning Officer during election time in paragraph-6 held as under:

“6. Having given our careful consideration to the contention raised on behalf of the parties, we are of the opinion that the petition deserved to be allowed on the short ground that the impugned order of suspension could not have been passed by the Returning Officer under the provisions of Section 28-A of the Act, 1951, which confers power of superintendence, control and discipline only on the Election Commission in respect of various officer working during

election, and who are deemed to be on deputation with the election Commission. The provision of Section 28-A of the Act, 1951 as introduced by Amendment Act No.1/1989, with effect from 15.03.1989 is reproduced hereinunder:.....

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.”

6. The said judgment of the Division Bench of MP High Court further has been again reiterated by the MP High Court in a similar set of facts in the case of S. K. Tripathi Vs. State of MP and others, 2009 (3) MPHT 504 wherein the District Education Officer was placed under suspension by the Divisional Commissioner during the election period and relying upon the aforesaid judgment in the case of Umesh Singh Yadav (supra) in paragraph-9 & 10 the MP High Court has held as under:

“9. The distinction which is sought to be made by Mr. Shukla, in my considered opinion, is really not of any assistance to him. What has been stated by the Division Bench is that the power vests in the Election Commission for taking action against 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 respect of various officers working during election. The term “only” is of immense significance. The innovative submission of Mr. Shukla that the said decision was rendered only in context of Returning Officer and Election Commission is noted to be rejected inasmuch as the Bench has really stated that the power exclusively vests with the Election Commission. In the case at hand, the order of suspension has been passed by the respondent no.2. He may be the Disciplinary Authority

under the 1966 Rules but when the petitioner was on election duty there is deemed deputation with the Election Commission and, therefore, the provision contained in Section 28A would be applicable on all fours. Therefore, the respondent no.2 could not have passed the order as has been passed by him under Annexure P-1 as the election duty was in continuance.

10. In view of the aforesaid analysis the order contained in Annexure P-1 suspending the petitioner has to pave the path of extinction and accordingly, it is hereby lanced. The petitioner would be deemed to be in service and would be entitled to all consequential benefits including the salary. Needless to emphasize, as the election duty is over in praesenti, it will be open to the respondents to pass appropriate orders keeping in view the law in the field.”

7. Given the aforesaid two judgments of the MP High Court and also taking note of the provisions of Section 28A of the Representation of People Act, 1951, this Court is of the opinion that the impugned order in the instant case also stands squarely covered by the aforesaid judgments. Hence, this court is of the view that the impugned order of suspension has been issued by an Officer who is not otherwise competent.

8. The impugned order therefore deserves to be and is accordingly set aside/quashed. It is ordered that the petitioner is entitled for all consequential benefits as if the petitioner was not placed under suspension. Needless to mention that the quashment of the impugned order of suspension Annexure P-7 dated 10.11.2018 by this Court in the present writ petition would not preclude the authority concerned for initiating disciplinary action against the petitioner for the misconduct that he has committed including the placement of the petitioner under suspension by the competent authority under the service rules governing the service conditions of the petitioner.

9. The writ petition accordingly stands allowed and disposed of.

**Sd/-
(P. Sam Koshy)
Judge**

Bhola