

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3274 of 2019**

Kamal Kant Shriwas S/o Jageshwar Prasad Shriwas Aged About 44 Years R/o House No. 316, Village Pandhi, Tahsil Masturi, District Bilaspur Chhattisgarh. **---- Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary, Tribal And Schedule Caste Development Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, District Raipur Chhattisgarh.
2. Commissioner Tribal And Schedule Caste Development Department, Atal Nagar, Raipur, District Raipur Chhattisgarh.
3. Chhattisgarh State Election Commissioner, Through Chief Election Officer, Shastri Chowk, Raipur, District Raipur Chhattisgarh.
4. Assistant Commissioner, Tribal Welfare Department Korba District Korba Chhattisgarh. **---- Respondents**

For Petitioner	:	Mr. Syed Majid ali, Advocate
For State	:	Mr. Rahul Mishra, Dy. G. A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****02/05/2019**

1. The Challenge in the present writ petition is to the order Annexure P/1 dated 25.04.2019 passed by the respondent No. 2 Commissioner, Tribal & Schedule Caste Development Department, Raipur. Vide the said order, the petitioner has been placed under suspension for the same alleged misconduct.
2. Counsel for the petitioner, at the outset, submits that the action of suspending the petitioner in the midst of election code of conduct being in operation is per se illegal.
3. According to the petitioner, he was assigned the duties of an Assistant to the nodal officer for the on going parliamentary election and therefore for all practical purposes under the provision of Section 28 (A) of the Representation of People Act 1951, the services of the petitioner stand on deputation to the Election Commission of India

and therefore any disciplinary action could have been taken only by the Election Commission of India. In the instant case the impugned order of suspension has been issued by the respondent No. 2, neither under the instructions of the Election Commission, nor has been issued by the office of the Election Commission in any manner.

4. Counsel for the petitioner referred to the judgment of the M.P High Court in the case of S.K. Tripathi Vs. State of MP and Others, 2009 (3) MPHT 504, where the facts are somewhat similar to the present writ petition.
5. The State counsel on the contrary opposing the petition submitted that it is a case where the petitioner was found to have committed same misconduct and immediately when it was detected by the competent authorities in the Department, they have issued an order placing the services of the petitioner under suspension vide order dated 25.04.2019. That he further contents that so far as the Election in the State of Chhattisgarh is concerned since that was over on 23.04.2019 therefore the order can not be said to be hit by section 28 (A) of Representation of People Act 1951.
6. Having heard the contentions put forth on either side and on perusal of records what is undisputed fact that the petitioner is working as a circle coordinator under the Tribal & Schedule Caste Development Department. The petitioner admittedly was assigned the work of Election duties in the on going parliamentary Election. The petitioner was discharging the duties of Assistant to the Nodal Officer as is evident from his identity card and other documents enclosed by the petitioner in this writ petition as such he has been assigned the election duties.

7. Given the aforesaid admitted fact, it would be necessary at this juncture to refer to Section 28 (A) of the Act of 1951, held as under:-

“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.”

8. The Division Bench of the M.P High Court in somewhat similar facts in the case of S.K. Tripathi Vs. State of M.P. 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 judgment in the case of Umesh Singh Yadav 1992 M.P.L.J 173 in Paragraph-9 & 10 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-8 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 in as much 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.”

9. Recently this Court had an occasion of deciding the similar issue where the order of suspension passed during the election program was under challenge, that is in the case of Kamal Singh Nareti Vs State of Chhattisgarh and others in WPS No. 8061 of 2018 decided on 06.12.2018. This Court referring to a couple of decision of the Madhya Pradesh High Court had taken the stand that the during the period of election after the notification of the same, employees who have been assigned election duties for all piratical purposed stand on deputation to the election commission and during the said period the entire control superintendence and discipline of these officers rest with election commission. This Court in Paragraph-5 for the said case has held as under:-

“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 M.P.H.C 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 28A 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 which 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.”

10. Given the aforesaid judgment of the M.P High Court also considering the decision of this Court in the case of Kamal Singh Nareti and also placing reliance on Section 28 (A) of the Act of 1951, this Court has no hesitation in reaching to the conclusion that the code of conduct for the election was notified on 10.03.2019 and the election results are to be declared on 23.05.2019 and as such till the election results are declared and notified the code of conduct would stand in operation.
11. Since in the given facts, the code of conduct being in operation this Court is of the opinion that the order of suspension by the respondent No. 2 therefore would not be sustainable as of now. The authorities concerned if at all if they intend to place the petitioner under suspension initiate the same through the office of the Election Commission and not otherwise. For the aforesaid reason, the order of suspension is not sustainable and the same deserves to be and is accordingly set aside / quashed.
12. However, though this Court has quashed the suspension order on the technical grounds of it being hit by Section 28 (A) of the Act of 1951, the State is not precluded of initiating the proceeding afresh against the petitioner immediately after the completion of the period of operation of the election code of conduct.

13. With the aforesaid observations, the writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

jjyoti