

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 210 of 2016**

Dr. S.A. Ali, Aged about 62 years, S/o Late Shri Sayyed Ali, Block Medical Officer, Primary Health Centre, Patan R/o Patan Tahsil Patan , Distt. Durg, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh through Principal Secretary Health and Family Welfare Department, Government of Chhattisgarh, Mahanadi Bhawan, Naya Raipur, Tahsil and Distt. Raipur, Chhattisgarh.
- 2.Office and Collector and Distt. Election Officer (Local Election) Distt. Durg, Durg, 491001, Tahsil and Distt. Durg, Chhattisgarh.
- 3.Director of Health Services, Government of Chhattisgarh, Indrawati Bhawan, Naya Raipur Tahsil and Distt. Raipur, Chhattisgarh.

---Respondents

For Petitioner :- Mr. V.G. Tamaskar, Advocate

For Respondents/State :- Mr. Amrito Das, Addl. A.G.,
Ms. Sunita Jain, G.A. and
Mr. Suyash Dhar, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

14/12/2021

- 1.By way of this writ petition, petitioner seeks to question the departmental enquiry initiated against him by respondent No. 2 by issuance of charge-sheet

dated 28/02/2005 (Annexure P/2) on the ground that he has refused to accept important communication dated 15/01/2005 sent by Tahsildar-cum-Returning Officer (Panchayat), Patan related to Panchayat Election held in the year 2004-2005 which is violative of Rules 1, 2 and 3 of Chhattisgarh Civil Services (Conduct) Rules, 1965 punishable under the Rules of Chhattisgarh Civil Services (Conduct) Rules, 1966.

2. The petitioner herein was working on the post of Block Medical Officer when he was served with the communication dated 15/01/2005 sent by Tahsildar-cum-Returning Officer (Panchayat), Patan seeking information of the employees working under him, which he refused to accept pursuant to which he was subjected to charge-sheet dated 28/02/2005 (Annexure P/2) which has been challenged by the petitioner on the ground that the District Election Officer has no power and jurisdiction to initiate departmental enquiry against him, as such, it deserves to be quashed.

3. Return has been filed by the respondents/State stating inter alia that the District Election Officer, being the Controlling Authority of the petitioner during the election, was duly authorized to take departmental action against the petitioner

for misconduct committed by him during election duty, as such, the departmental enquiry initiated against the petitioner by respondent No. 2 is strictly in accordance with law.

4.Mr. V.G. Tamaskar, learned counsel for the petitioner, would submit that petitioner, at the relevant point of time, was not on deputation to the Commission, therefore, provisions of Rule 27 and 27A of Chhattisgarh Panchayat Nirvachan Niyam, 1995 would not attract and since the petitioner was not on deputation to Election Commission, therefore, the District Election Officer could not have initiated departmental enquiry against him. Even otherwise, under Rule 27A of the Rules of 1995, Election Commission is the authority prescribed who could have taken any action against the petitioner, as such, charge-sheet dated 28/02/2005 (Annexure P/2) issued against the petitioner as well as the entire departmental proceeding initiated against him by respondent No. 2 is liable to be quashed.

5.Mr. Amrito Das, learned Additional Advocate General for the respondents/State, would submit that the departmental enquiry initiated against the petitioner by respondent No. 2 is strictly in

accordance with law and the instant writ petition deserves to be dismissed.

6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

7. True it is that petitioner was served with communication dated 15/01/2005 by the Tahsildar-cum-Returning Officer (Panchayat), Patan which he refused to accept and did not supply the requisite information within the stipulated time for which he has been subjected to departmental enquiry by the Collector-cum-District Election Officer.

8. At this stage, it would be appropriate to notice the provisions contained in Rules 27 and 27-A of the Rules of 1995, which states as under :-

"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."

9. A meaningful reading of the aforesaid provisions would show that the Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer, and any other officer appointed under Chapter V of the Rules of 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.

10. The word 'Commission' has been defined in Rule 2(c) of the Rules of 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.

11. 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..."

12. The aforesaid decision has been followed by the Madhya Pradesh High Court in **S.K. Tripathi v. State of Madhya Pradesh and others**² 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 respect of various officers working during election. The term "only" is of immense significance...."

13. In Steel Authority of India, Successor of Bokaro Steel Limited v. Presiding Officer, Labour Court at Bokaro Steel City, Dhanbad, and another³,

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.

14. Reverting to the facts of the present case in light of the aforesaid judgments, it is quite vivid that the action of initiation of departmental enquiry against the petitioner could have been taken by respondent No. 2 only if the petitioner was in deputation to the Commission on 15/01/2005 i.e. the date on which he has allegedly refused to accept the communication sent by the Tahsildar-cum-Returning Officer (Panchayat), Patan. Admittedly and undisputedly, petitioner was not in deputation and he was not in election duty though he was obliged to accept the said communication and proceed further with the reply, but since he was not on deputation to

3(1980) 3 SCC 734

the Commission, therefore, provisions of Rules 27 and 27-A of the Rules of 1995 would not attract. As such, respondent No. 2 was not empowered to take any decision regarding suspension and initiation of departmental enquiry against the petitioner. He could only have referred the matter to the State Government for taking appropriate action against the petitioner for non-compliance of the order of Tahsildar-cum-Returning Officer (Panchayat), Patan.

15. As a fallout and consequence of the aforesaid legal discussion, the charge-sheet dated 28/02/2015 (Annexure P/2) issued against the petitioner by respondent No. 2 as well as the entire departmental proceeding instituted against the petitioner are hereby quashed.
16. The writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

Harneet