
(2011) 04 PAT CK 0019
In the Patna High Court
Case No : CWJC No. 6723 of 2011

Dr. Ram Bilas Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Citation : (2011) 04 PAT CK 0019

Judgement

Ajay Kr. Tripathi, J.—Heard learned Senior Counsel for the petitioner, learned Senior Counsel for the State Election Commission, learned counsel for the State and learned counsel for the Magadh University.

2. The reason for filing the present writ application is deputation of the teachers of what is known as Gaya College, Gaya for election duty as Patrolling Magistrates in different phases of Bihar Panchayat Election, which is under way in the State.

3. The primary contention on behalf of the petitioner is that keeping in view the decision of the Hon'ble Supreme Court in the case of Election Commission of India Vs. St. Mary's School and Others, and the interest of the teaching institutions and the students, they ought to be exempted from election duty and the respondent Election Commission have breached the declaration made by the Hon'ble Supreme Court in this regard. They want a categorical direction that they be exempted now from election duty so that they could carry on the responsibility of teaching and imparting education to the students including conduct of various examinations which are scheduled in the month of May. He draws my attention to a communication dated 31.3.2011 issued by the Additional Member, Board of Revenue-cum-Controller of Examinations.

4. Counsel for the State Election Commission draws the attention of this Court to 2009 Amendment to the Bihar Panchayat Raj Act, 2006, which creates an obligation u/s 125(9) upon all such employees, who are indicated therein, to assist in election work. According to him, looking at the large scale need for deployment of personnel for free and fair election of the Panchayats, a handful of

Government employees may not be enough in such a situation. So long the statute provides power, which has been exercised bona fide, taking into consideration the interest of the students and the College in question, no interference is required with such deputation orders. Their stand is that not every teachers have been deployed and they have been deployed as Patrolling Magistrates only for three phases of the election which has to be conducted in the district, which will not keep them away from their responsibility as teachers for a long time. A few days absence during the course of election is not going to throw the administration of the college totally out of order.

5. The Court has gone into the decision of the Hon'ble Supreme Court. The opinion expressed in the said decision is not in absolute terms. Further if the statute provides powers to the Election Commission in the State of Bihar, then it cannot be said that no deployment can be made in light of the decision of the Hon'ble Supreme Court.

6. Conduct of free and fair election is an integral part of democracy as well as the basic feature of the Constitution. Election to Panchayat bodies is equally important after the 73rd Constitutional Amendment, as elections to State Assemblies or Lok Sabha because Panchayats form the base or the unit to represent the interest of the citizens of the respective Panchayats of villages where majority of the population of India live. Looking at the number of Panchayats involved, obviously man power will have to be drawn from various sources.

7. In the totality of what has been noted above, there may not be an occasion for this Court to ban the State Election Commission from deploying teachers of the College in question for election duties.

8. It is, however, clarified that the District Magistrate who is also the District Election Officer, must take the interest of the College and the ensuing examinations into consideration as there has to be a delicate and fine balance between both the responsibilities.

9. The writ application stands disposed of with above observation.