

(2019) 02 RAJ CK 0047
In the Rajasthan High Court
Case No : Civil Writ No. 19170 Of 201

Rakesh Mehendiratta (Arora)

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 06-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 420
Representation Of People Act, 1951 — Section , 28A, 135A, 136, 136(f)
Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 — Rule 13, 19B, 22

Citation : (2019) 02 RAJ CK 0047

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : D.K. Godara, Moti Singh, Sandeep Shah

Final Decision : Allowed

Judgement

This writ petition has been filed by the petitioner aggrieved against the order dated 10/12/2018 passed by the District Electoral Officer, Hanumangarh (Rajasthan) and order dated 10/12/2018 passed by Commissioner, Municipal Council, Hanumangarh, whereby, the petitioner has been placed under suspension/directed to report at Jaipur.

It is inter alia indicated in the writ petition that the petitioner was working on the post of Accounts Officer at Municipal Council, Hanumangarh and was having the additional charge of Executive Officer, Rawatsar; a complaint was filed against the petitioner regarding misuse of his position against which the petitioner approached this Court under Section 482 Cr.P.C. challenging the FIR registered for the offences falling under Section 420 etc. of I.P.C. & Sections 135-A and 136 of the Representation of People Act, 1951 ('the Act of 1951'), wherein, interim order has been granted by the Court. It is claimed that orders dated 10/12/2018 passed by the District Electoral Officer and Commissioner, Municipal Council, Hanumangarh respectively suspending the petitioner and relieving him was

received by the petitioner on 13/12/2018.

It is submitted by learned counsel for the petitioner that the action of the respondents in suspending the petitioner/relieving him are ex facie illegal and without jurisdiction. With reference to the order passed by the District Electoral Officer it was submitted that reference to provisions of Section 136 (f) of the Act of 1951 is absolutely baseless inasmuch as the said provisions do not empower the District Electoral Officer to suspend a Govt. servant like the petitioner as the District Electoral Officer is not the appointing authority of the petitioner, the petitioner was merely verifying Form 13-A of Conduct of Election Rules, 1961 ('the Rules, 1961') of the Electors of postal ballot as a gazetted officer only and was not holding any position in connection with the elections, and therefore, the order being bad in law deserves to be quashed and set aside.

As the petitioner had left the office, he had called the employees to the shop of his son and verified the forms there, which has been used for suspending the petitioner, which is totally baseless.

Further submissions have been made that the requirements of Rule 13 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 ('the Rules of 1958') dealing with suspension have not been complied with and, therefore, the orders impugned cannot be sustained and the same deserve to be quashed and set aside.

Learned Addl. Advocate General appearing for the respondent State supported the orders impugned. It was submitted that the plea raised by the petitioner in the petition is baseless. The petitioner had indulged in wrong doing and as such based on the report of Returning Officer (SDM), Hanumangarh, the petitioner was suspended.

It is submitted that the petitioner has alternative remedy of appeal under Rule 22 of the Rules, 1958 and, therefore, the writ petition may not be entertained.

On the issue of jurisdiction to suspend, submissions have been made that during the electoral process, in terms of provisions of Section 28-A of the Act of 1951, the petitioner was deemed to be on deputation to Election Commission and under Rule 19-B of the Rules, 1958 the Head of Borrowing Department shall have the powers of the Appointing Authority for the purpose of placing the employees under suspension and, therefore, the plea raised in this regard has no substance.

Further submissions have been made with reference to photographs filed as Annex.R/1/2 and R/1/3 that the petitioner in fact had indulged in wrong doing and, therefore, he is not entitled to any relief.

I have considered the submissions made learned counsel for the parties and have perused the material available on record.

So far as the submission pertaining to availability of alternative remedy is concerned, the petitioner has raised a legal issue pertaining to the jurisdiction of

the authority in passing the order of suspension, therefore, the availability of alternative remedy cannot come in the way of petitioner in maintaining the writ petition.

A bare perusal of the order dated 10/12/2018 passed by the District Electoral Officer, Hanumangarh would indicate that the District Electoral Officer, Hanumangarh on receiving the information regarding unauthorized possession of postal ballots and stamping thereon, sent the Returning Officer for inquiry, who in his report indicated that the petitioner was prima facie involved and, therefore, keeping reserved the action under Section 136(f) of the Act of 1951, Rules of 1958 and Municipalities Act, the petitioner was suspended and it was ordered that during the suspension period his Head Quarter will be at Jaipur. Whereafter, the Commissioner, Municipal Council, Hanumangarh on the same day, after noticing the contents of the order passed by the District Electoral Officer, directed the petitioner to mark his presence at Jaipur.

Though, learned Addl. Advocate General, during the course of submissions, relied on provisions of Section 28-A of the Act of 1951 for sustaining the powers of District Electoral Officer in suspending the petitioner, nowhere in the reply, reference to the said provision and as to what position the petitioner was holding at the relevant time has been indicated. However, on a specific query made, it was submitted that he was holding the post of Accounts Officer only.

The provisions of Section 28-A of the Act of 1951 reads as under:

"28-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 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."

A bare perusal of the above provision would reveal that it is the returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under Part IV of the Act of 1951 and any police officer designated for the time being by the State Government shall be deemed to be on deputation to the Election Commission.

Merely because the petitioner was at the relevant time working as Accounts Officer with the Municipal Council, Hanumangarh, it cannot be said that he was holding any position either as a returning officer or assistant returning officer or presiding officer or polling officer or any other position under Part IV of the Act of 1951 and, therefore, reliance placed by the respondents for tracing the power with the District Electoral Officer to suspend the petitioner cannot be sustained. It cannot be said that the petitioner would be deemed to be on deputation to the

Election Commission.

So far as the reference to provisions of Section 136(f) of the Act, 1951 is concerned, Section 136 deals with the offences and penalties under the Act of 1951, wherein, any interference with the ballot papers is an electoral offence for which admittedly the respondents have taken steps for prosecuting the petitioner in accordance with law. The provision as such has no relevance to the power of suspension.

Suspension of an employee is governed by the provisions of Rule 13 of the Rules of 1958, wherein, either the appointing authority or any authority to which the employee is subordinate can order for suspension of any government servant.

As already noticed hereinbefore, as it cannot be said that the petitioner was deemed to be on deputation to the Election Commission, as claimed by the respondents, on 10/12/2018 when he was suspended by the District Electoral Officer, reliance placed by the respondents on Rule 19-B of the Rules, 1958 in this regard has no application as the said rule would apply only in a case where the employee is on deputation, whereby, Head of the Borrowing Department shall have the power of appointing authority for placing the employee under suspension.

In view of above discussion, the suspension of the petitioner by the District Electoral Officer, who was not the appointing authority of the petitioner, by order dated 10/12/2018 cannot be sustained.

However, it is made clear that the present matter has been dealt with only on the legal aspect of jurisdiction to suspend, as the material placed on record by the respondents is telltale qua the conduct of the petitioner, the respondents were bound to take action, however, for any conduct the knee jerk reaction by which the order has been passed by the District Electoral Officer, who had no jurisdiction to suspend the petitioner, cannot be sustained.

In view of the above discussion, the writ petition filed by the petitioner is allowed. The order dated 10/12/2018 (Annex.2) passed by the District Electoral Officer is quashed and set aside. The respondents, however, would be free to take appropriate proceedings, in accordance with law.