

Ajit Singh

Vs

Chief Election Commissioner of India and Others

Civil Appeal No. 2653 of 1980

(K. Jagannatha Shetty, A. M. Ahmadi JJ)

26.09.1989

JUDGMENT

AHMADI, J. –

1. The appellant Ajit Singh was appointed as Grade II Stenographer of February 2, 1953 and was promoted to the post of Senior Personal Assistant w.e.f. April 1, 1970. On January 4, 1974 he was further promoted to the post of Private Secretary to the Deputy Election Commissioner in which capacity he worked till July 26, 1977 when the Deputy Election Commissioner under whom he was working relinquished charge of office.
2. The first respondent is the Chief Election Commissioner. One Tilak Raj was the Private Secretary to the first respondent. On the said Tilak Raj being promoted as Under Secretary, the post of Private Secretary to the Chief Election Commissioner fell vacant and it was not filled in forthwith. However, by an order dated October 23, 1979 respondent 2, M. L. Sarad was appointed to the same post w.e.f. September 1, 1979. On learning about the appointment of respondent 2 to the said post the appellant complained that the said appointment was contrary to the Election Commission (Respondent of Staff) Rules, 1974 (hereinafter called 'the 1974 Rules'). The appellant's representation was rejected on the ground that he was not eligible for appointment to the post in question.
3. The appellant then filed a Civil Writ Petition No. 1583 of 1979 in the High Court of Delhi Challenging the notification dated October 23, 1979 appointing M. L. Sarad to officiate as Private Secretary to the Chief Election Commissioner w.e.f. September 1, 1979 as well as the Memorandum dated October 26, 1979 informing him that he was ineligible for appointment to the said post. During the pendency of this writ petition it was disclosed to the Court that the Commissioner proposed to make suitable changes in the 1974 Rules insofar as appointment to post of Private Secretary to the Chief Election Commissioner was concerned. The leave of the Court was sought to amend the 1974 Rules. It was also disclosed that the Commissioner proposed to withdraw the order of October 23, 1979 appointing M. L. Sarad as Private Secretary to the Chief Election Commissioner. The Court granted leave to the Commissioner to amend the 1974 Rules. By the notification dated December 3, 1979 earlier notification of October 23, 1979 appointing M. L. Sarad as officiating private Secretary to the Chief Election Commissioner was withdrawn. The 1974 Rules were amended by notification dated December 10, 1979 by the President in exercise of the power conferred by the proviso to Article 309 of the Constitution of India. By the said amendment entry at serial No. 9 relating to the post of the Private Secretary to Chief Election Commissioner and the entries relating thereto came to be omitted. Respondent 1 brought these two changes to the Court's notice by an application dated December 21, 1979. Thereupon, the appellant sought leave to amend

the memo of his writ petition. The Commission also informed the appellant by its communication dated January 17, 1980 that it had withdrawn its earlier memorandum of October 26, 1979 whereby it was stated that the appellant was not eligible for appointment to the said post. The court took notice of these facts but thought that the writ petition survived, since the appellant was not considered for appointment to the post in question w.e.f. September 1, 1979. Besides the appellant also challenged the Election Commission (Recruitment of Staff) Amendment Rules, 1979 (hereinafter called 'the 1979 Rules') by which entry at serial No. 9 came to be omitted. The contention of the appellant was that the entire exercise culminating in the amendment of 1974 rules was mala fide and was undertaken with the sole purpose of depriving him of appointment to the said post. It may here be mentioned that after the 1979 Rules came into force respondent 2 was re-appointed to the same post by notification dated February 27, 1980 w.e.f. the previous day. It was contended that the 1979 Rules had the effect of conferring an absolute discretion on the Chief Election Commissioner to appoint any person of his choice to the post in question. To put it differently the appellant contended that the amendment conferred arbitrary and unfettered power on the Chief Election Commissioner to appoint any person he deemed fit as his Private Secretary regardless of his qualification. It was further contended before us by the learned Counsel for the appellant that if the appellant had been appointed to the post in question on September 1, 1979 the subsequent amendment of the Rules would not have operated retrospectively to his detriment and he would have continued as Private Secretary even after the amendment.

4. A learned Single Judge of the High Court came to the conclusion that the 1979 Rules were not mala fide nor were they arbitrary as alleged by the appellant. The High Court also came to the conclusion that since the memorandum of October 26, 1979 was withdrawn the appellant was entitled to be considered for appointment to the post of Private Secretary w.e.f. September 1, 1979. The High Court, therefore, directed Class II Department Promotion Committee to consider the case of the appellant for appointment to the post of Private Secretary to the Chief Election Commissioner w.e.f. September 1, 1979. It ordered that if the appellant is selected for appointment by promotion to the said post his appointment will be deemed to have been made on ad hoc basis for September 1, 1979 to December 14, 1979 after which the 1979 Rules came into force. Monetary benefits due to the appellant on such appointment were ordered to be calculated and paid. The appellant feeling aggrieved by this order preferred an appeal, L.P.A. No. 113 of 1980, before a Division Bench of the same High Court. This Letters Patent appeal was summarily dismissed on July, 24, 1980. Feeling aggrieved by the said order the petitioner approached this Court and secured special leave under Article 136 the Constitution.

5. Mr. Tarkunde, the learned counsel for the appellant, reiterated the same contention which were canvassed before the learned Single Judge of the High Court and added that if the appellant was appointed w.e.f. September 1, 1979, the subsequent amendment of the Rules would not have stood in his way and he would have continued as Private Secretary to the Chief Election Commissioner even after the amendment of the said Rules. He, therefore, contended that the High Court was not right in limiting the relief in regard to the appellant's appointment up to December 14, 1979 i.e., till the 1979 Rules came into force. It may at this stage be pointed out that pursuant to the order of the High Court directing the Class II Department Promotion Committee to consider the case of the appellant for appointment to the post of Private Secretary w.e.f. September 1, 1979, the said Committee met on May 9, 1980 and considered the case of all eligible persons for appointment to the post in question w.e.f. September 1, 1979. The Departmental Promotion Committee did not anyone suitable for appointment to the said post. Intimation in that behalf was given to the appellant by the memorandum of May 14, 1980. This decision of the Departmental Promotion Committee sets at rest the argument that the appellant would have continued as Private Secretary had he been

appointed to the said post w.e.f. September 1, 1979.

6. Mr. Tarkunde, the learned counsel for the appellant, rightly did not seriously contend before us that the 1979 Rules were mala fide and were made solely with a view to deny appointment to the appellant as Private Secretary to the Chief Election Commissioner. It must be realised that in reply to the proposal to amend the extant rules the Ministry of Law, Justice and Company Affairs, in Consultation with the Department of Personnel and Administrative Reforms, wrote to the Commission on December 5, 1974 as under :

"The post of Private Secretary to the Chief Election Commissioner is borne on the personal staff of the Chief Election Commissioner and appointment thereto is outside the purview of the UPSC vide entry 5 of Schedule to the Union Public Service Commissioner (Exemption from Consultation) Regulations, 1958. The appointment of a person thereto may be made by the Chief Election Commissioner at his discretion without the consultation of the Union Public Service Commission. The appointment to the post of Private Secretary to the Chief Election Commissioner is also co-terminus with the appointment of the Chief Election Commissioner. In view of this position, the Department of Personnel and Administrative Reforms have advised that the Recruitment Rules for the post of Private Secretary to the Chief Election Commissioner need not be made. The Rules for the post as proposed by the Commissioner have therefore not been notified."

After the amendment of the 1974 Rules the Commissioner issued an office order dated February 18, 1980 stating that appointment to the post of Private Secretary shall be made 'in the absolute discretion of the Chief Election Commissioner' from amongst persons of suitable class or category serving in the Commission or from outside, as he may deem fit. The words 'in the absolute discretion of the Chief Election Commissioner' were construed by counsel to mean that arbitrary and unfettered power was conferred to the Chief Election Commissioner in the matter of choice of his Private Secretary. The Office order further stated that the appointment of the incumbent to the said post 'shall be co-terminus with the incumbency in the post of the Chief Election Commissioners. This order shows that after the amendment of the 1974 Rules the matter in regard to the choice of personnel for the post of Private Secretary to the Chief Election Commissioner was left to the sole discretion of the Chief Election Commissioner.

7. It will appear from the above developments that the proposal for the amendment of the relevant recruitment rules was moved way back in July 1970. The advice given by the Law Ministry by their Communication of December 5, 1974 was ultimately accepted by the Commission. By the letter of March 19, 1975, the Law Ministry, however, informed the Commission that the Commission's proposal would be considered at the time of change in the incumbency in the post of the Chief election Commissioner. That was why the process of amendment of the 1974 Rules was delayed until December 1979. The incumbent to the post of Chief Election Commissioner at all material times had, therefore, nothing to do with the proposal to amend the recruitment rules. It was, therefore, impossible to contend that respondent 1's action was mala fide and was actuated with the sole desire to deny promotion to the appellant to the post of Private Secretary to the Chief Election Commissioner.

8. Coming to the next limb of attack it must be realised that in a democratic republic like ours the office of the Chief Election Commissioner is of vital importance. Article 324 confers the power of superintendence, direction and control of elections in the Chief Election Commissioner. Free and

fair elections are the basic postulates of any democratic order. A duty is cast on the Chief Election Commissioner to ensure free and fair elections. This makes the post of the Chief Election ensure free and fair elections. This makes the post of the Chief Election Commissioner a sensitive one. The Chief Election Commissioner has to deal with several matters which are brought before him by political parties as well as the government. His office is called upon to handle correspondence which require a high degree of secrecy and confidentiality. He would naturally require the services of his Private Secretary for handling such highly secret and confidential files and correspondence. It is, therefore, imperative that the person working as Private Secretary to the Chief Election Commissioner must be one in whom implicit faith and confidence can be placed. He must be a man of impeccable character and integrity, besides being competent in secretarial work. Integrity, honesty and competence are the basic hallmarks for the post. In addition, he must be a person in whom the Chief Election Commissioner has absolute trust and faith. It is for this reason that the tenure of the post is made co-terminus with the tenure of the Chief Election Commissioner. That is for the obvious reason that a man chosen by the predecessor may not be enjoying the same degree of confidence of his successor. He may like to have his own man of confidence to attend to his secretarial work. It is, therefore, not without reason that the choice of personnel to the post of Private Secretary is left to the Chief Election Commissioner himself. This is nothing new. Similar provision is made for certain other functionaries as can be seen from the Home Department's notification dated September 1, 1958 as amended from time to time. We are, therefore, of the opinion that having regard to the special needs of the post it was imperative to leave the matter of choice of personnel in the absolute discretion of the Chief Election Commissioner. We, therefore, do not think that the office order of February 18, 1980 can be struck down. The High Court was, therefore, right in limiting the relief up to December 14, 1979 i.e., till the 1974 Rules became effective. Since consultation with the UPSC was not necessary after the amendment introduced by the 1979 Rules, the Chief Election Commissioner was entitled to choose the man of his confidence as Private Secretary. The Choice of respondent 2 to the post cannot, therefore, be questioned.

9. In view of the above, we do not see any merit in the contentions urged before us by the learned counsel for the appellant. We, therefore, dismiss this appeal but in the facts and circumstances of the case leave the parties to bear their own costs.

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