

AJIT SINGH  
v.  
CHIEF ELECTION COMMISSIONER OF INDIA & ORS.

SEPTEMBER 26, 1989

[K. JAGANNATH SHETTY AND A.M. AHMADI, JJ.]

*Election Commission (Recruitment of Staff) Rules, 1974—  
Appointment of Private Secretary to Chief Election Commissioner—  
Choice left to Chief Election Commissioner—Whether valid and legal—  
Consultation with U.P.S.C. not necessary after 1979 amendment to  
Rules.*

The appellant was working as Private Secretary to the Deputy Election Commissioner until July 26, 1977 when the Deputy Election Officer under he whom was working relinquished his charge.

One Tilak Raj who was working as Private Secretary to Chief Election Commissioner was promoted as Under Secretary. In order to fill the vacancy caused by his promotion, Respondent No. 2 M.L. Sarad, was appointed to the said post w.e.f. September 1, 1979. The appellant made a representation complaining that the said appointment was contrary to the Election Commission (Recruitment of Staff) Rules, which was rejected on the ground that he was not eligible for appointment to the said post. Thereupon, the appellant filed a Writ Petition challenging the notification dated 23.10.79 appointing the said M.L. Sarad as Private Secretary. During the pendency of the Writ Petition the Commission under due intimation to the Court amended the 1974 Rules as a result of which entry at serial No. 9 relating to the Post of P.S. to Chief Election Commissioner was omitted. The appellant was informed by the Commission that it had withdrawn the Memo of October 26, 1979 wherein it was stated that the appellant was not eligible for appointment to the post in question. The Court took due notice of the amendment but held that the Writ Petition survived since the appellant was not considered for appointment to the post w.e.f. 1.9.79.

The appellant contended before the High Court that (i) the entire exercise culminating in the amendment of the Rules was *mala fide*; (ii) that the amendment conferred arbitrary and unfettered power on the Chief Election Commissioner to appoint any person as his Private Secretary; (iii) that in case the appellant had been appointed to the post on 1.9.79, subsequent amendment of the Rules would not have operated

A retrospectively to his detriment and he would have continued.

The High Court came to the conclusion that the 1979 Rules were not *mala fide* nor were they arbitrary and that since the memo of 26.10.79 was withdrawn, the appellant was entitled to be considered for appointment to the post in question w.e.f. 1.9.79. Accordingly the High Court directed the class II Departmental Promotion Committee to consider the case of the appellant to the post in question w.e.f. 1.9.79. It further ordered that if the appellant is selected for appointment to the said post, his appointment will be deemed to have been made on *ad hoc* basis from 1.9.79 to December 14, 1979 after which 1979 Rules came into operation. Monetary benefits were also directed to be paid to the appellant.

C The appellant being dissatisfied with the aforesaid order preferred Letters Patent Appeal which was summarily rejected on 24.7.80. The appellant has, therefore, appealed to this Court after obtaining Special Leave.

D Dismissing the appeal, this Court,

HELD: 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 system. A duty is cast on the Chief Election Commissioner to ensure free and fair elections. This makes the post of 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 secret and confidential files and correspondence. Integrity, honesty and competence are the basic hallmarks for the said 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. [255E-G]

H Since consultation with the U.P.S.C. was not necessary after the

**amendment introduction by the 1979 Rules, the Chief Election Commissioner was entitled to choose the man of his confidence as Private Secretary. The choice of Respondent No. 2 to the post cannot, therefore, be questioned. [256C]**

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2653 of 1980.

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From the Judgment and Order dated 24.7.1980 of the Delhi High Court in L.P.A. No. 113 of 1980.

V.M. Tarkunde, A.B. Lal and V.N. Ganpule for the Appellant.

T.S.K. Iyer and Ms. A. Subhashini for the Respondents.

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The Judgment of the Court was delivered by

**AHMADI, J.** The appellant Ajit Singh was appointed as Grade II Stenographer on 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.

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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 No. 2 M.L. Sarad was appointed to the same post w.e.f. September 1, 1979. On learning about the appointment of respondent No. 2 to the said post the appellant complained that the said appointment was contrary to the Election Commission (Recruitment 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.

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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

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- A eligible for appointment to the said post. During the pendency of this writ petition it was disclosed to the Court that the Commission proposed to make suitable changes in the 1974 Rules insofar as appointment to the 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 Commission proposed to
- B 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 Commission 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
- C 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. The respondent No. 1 brought these two changes to the Court's notice by an
- D 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
- E 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.
- F 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 No. 2 was re-appointed to the same post by notification dated February 27, 1980 w.e.f. the previous day. It was contended that
- G 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
- H 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. A

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 Departmental 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 from 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 of the Constitution. B  
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Mr. Tarkunde, the learned counsel for the appellant, reiterated the same contentions 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 upto 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 Departmental 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 find 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 E  
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A 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.

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 extent 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:

C “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 U.P.S.C. vide entry 5 of Schedule to the Union Public Service Commission (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 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 Commission have therefore not been notified.”

F After the amendment of the 1974 Rules the Commission 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 Commissioner’. 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.

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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 No. 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.

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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 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

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- A same degree of confidence of his successor. He may like to have his own man of confidence to attend of 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 1st September, 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 upto December 14, 1979 i.e. till the 1974 Rules became effective.
- B Since consultation with the U.P.S.C. 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 No. 2 to the post cannot, therefore, be questioned.
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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.

E Y.Lal

Appeal dismissed.