

**Court No. - 4**

**Case :-** WRIT - A No. - 5951 of 2024

**Petitioner :-** Ravi Prakash Mishra

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy.  
Panchayati Raj, Lko. And 7 Others

**Counsel for Petitioner :-** S M Singh Royekwar

**Counsel for Respondent :-** C.S.C.,Anindya Shastri

**Hon'ble Rajesh Singh Chauhan,J.**

1. Heard.

2. This Court has passed order dated 31.07.2024, which reads as under:-

*"1. Heard Sri S.M. Singh Royekwar, learned counsel for the petitioner, Sri Sandeep Sharma, learned Standing Counsel for the State and Sri Anindra Shastri, learned counsel for the opposite party No.8.*

*2. Sri Yoyekwar, learned counsel for the petitioner has assailed the impugned transfer order dated 20.07.2024 (Annexure No.1), passed by the District Panchayat Raj Officer, Gonda, whereby the petitioner who is serving on the post of Assistant Development Officer (Panchayat), has been transferred from Vikas Khand Wazirganj to Vikas Khand Mujehna, District-Gonda on the ground that the State Election Commission has notified election of Panchayat on 15.07.2024 (Annexure No.2) and election for Block Wazirganj is to be conducted pursuant to the election notification.*

*3. As per Sri Royekwar, after the notification having been issued by the State Election Commission, the administrative authority cannot transfer an employee from one place to another place even in the same district without taking prior permission from the State Election Commission.*

*4. On being confronted learned counsel for the State Election Commission as to whether any permission/ approval has been given transferring the petitioner and the same query has been put from Sri Sandeep Sharma learned counsel for the State as to whether the authority concerned has taken consent from the Election Commission, both the counsels appearing for the opposite parties have requested that some short time may be given them to seek specific instructions on that point.*

*5. List/ put up this case on 02.08.2024 as fresh. On that date, this matter may be taken up immediately after fresh cases.*

*6. Till the next date of listing, the status-quo as on today i.e. 31.07.2024, shall be maintained."*

3. Sri S.M. Singh Royekwar, learned counsel for the petitioner,

has filed supplementary affidavit enclosing true copy of the Model Code of Conduct issued by the Election Commission, the same is taken on record.

4. Learned counsel for the State Election Commission and learned Standing Counsel, both, have stated that before issuing the impugned transfer order dated 20.07.2024 no approval/permission has been taken from the State Election Commission.

5. Sri S.M. Singh Royekwar has drawn attention of this Court towards para-6 (Ka) of the Model Code of Conduct, which categorically provides that during the currency period of election notification, no employee of the area would be transferred/ appointed/promoted and if such transfer etc. is necessary on account of compelling circumstances, prior permission/ approval from the State Election Commission would be required.

6. Sri Royekwar has drawn attention of this Court towards the decision of the Division Bench of this Court in re; **R.K. Mittal Vs. State of U.P. and another, 2004 SCC OnLine All 1772**, wherein the Division Bench has observed that transfer of an employee whose services are required in the election process for conducting the election smoothly, such exercise shall be regulated by the Election Commission in order to conduct the election free and fair; relevant para-23 thereof reads as under:-

*"23. Transfer of the employees whose services are required in the electioneering process, may be restrained/regulated by the Election Commission in order to conduct the election free and fair, for the reason that a political party in power, may post the officers of its liking at a particular place for a definite purpose of some unlawful gain in the election and in order to curb such a situation/possibility, it may be necessary for the Election Commission to issue such kind of direction, and once such a direction is issued, it requires strict adherence. It is not that every direction issued by the Commission requires observance religiously but where the direction is being issued to ensure free and fair election, all other authorities are under obligation to give strict adherence to the same."*

7. Therefore, Sri Royekwar has submitted that since no prior permission/ approval has been taken transferring the petitioner from one place to another place during the currency period of election notification, the impugned transfer order would be illegal, arbitrary and uncalled for, therefore, the same is liable to be quashed. He has further submitted that if the aforesaid transfer order has been executed and any person has submitted joining at the transferred place, even then such joining would be quashed for the reason that such transfer order would be non-est and void ab-initio.

8. Learned Standing Counsel has submitted that opposite party no.7 has submitted joining pursuant to the impugned transfer order dated 20.07.2024.

9. Having heard learned counsel for the parties and having perused the material available on record and also the decision of the Division Bench of this Court in re; **R.K. Mittal** (supra), I am of the considered opinion that if during the currency period of election notification, any transfer order has been passed without seeking prior approval or permission from the Election Commission, that order would be non est in the eyes of law and therefore, it would be treated as if no transfer order has been passed, thus, the execution thereof, if any, would be meaningless. If on account of the fact that one person has submitted his joining at the transferred place pursuant to the illegal and unwarranted transfer order during the currency period of election notification, then the very purpose of issuing election notification and the Model Code of Conduct would be frustrated.

10. Therefore, the impugned transfer order dated 20.07.2024 is hereby set aside/ quashed.

11. The District Panchayat Raj Officer, Gonda is directed to permit the petitioner to serve at Vikas Khand Wazirganj where he was serving before passing the impugned transfer order dated 20.07.2024 and opposite party no.7 shall be permitted to discharge his duties at Vikas Khand Mujehna where he was serving before the impugned order of transfer.

12. Not only the above, since this is an admitted fact that the District Panchayat Raj Officer, Gonda has passed the transfer order during the currency period of election notification without seeking prior permission or approval from the State Election Commission, therefore, the State Election Commission may seek explanation from the District Panchayat Raj Officer, Gonda to the effect that as to how he has issued the transfer order in violation of the Model Code of Conduct.

13. Accordingly, the writ petition is **allowed**.

14. No order as to costs.

**[Rajesh Singh Chauhan,J.]**

**Order Date :- 2.8.2024**

RBS/-