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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23069-2018

Date of Decision : Sept. 17, 2018

Teachers Association of Central University
of Punjab (Regd.)

.... Petitioner.

Versus

Central University of Punjab
and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Sameer Sachdeva, Advocate
for the petitioners.

Mr. K.K. Gupta, Advocate,
for respondent No.1.

Mr. H.S.Sitta, AAG, Punjab,
for the State-Punjab.

Mr. Sunil Kumar Sharma, Advocate,
for respondent-UOI.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India has been filed by Teachers Association of Central University of Punjab (for short, "the petitioner-Association") for quashing of order dated 6.9.2018 (Annexure P/2) whereby the respondent-authorities deputed the members of the petitioner-Association on duty of Zila Parishad and

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Panchayat Samiti Elections- 2018, which is not permissible as per law.

2. As per the petitioner-Association, the teachers, who are 58 in number, were informed vide impugned letter dated 6.9.2018 issued by the Registrar of respondent No.1-University (for short, "the respondent-University") that Deputy Commissioner, Bathinda, (respondent No.2 herein), deputed them for the forthcoming elections of Zila Parishad and Panchayat Samitis. The election and counting in Bathinda is scheduled for 19.09.2018. The petitioners represented the matter, but no action was taken by respondent No.2.

3. Contention was raised by learned counsel representing the petitioners that the Associate Professors and Assistant Professors (teaching faculty) are drawing basic pay and grade pay higher than that of Deputy Commissioner and in no way are subordinate to the Deputy Commissioner. Otherwise also, deputing the teachers on election duty will adversely effect the studies in the University, which has been deprecated by Hon`ble Supreme Court in **Election Commission of India Vs. St. Marys School and others**, Appeal (Civil) No. 5659 of 2007, decided on **6.12.2007**.

4. Learned counsel for the petitioners also contended that for every elections of Panchayat or a Municipality, employees of the State Government or local authorities are to be deputed and not of the respondent-University, but all these facts have been completely ignored while passing the impugned order and the same be set-aside.

5. Being given notice, respondent No.1 contested the writ petition

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primarily on the ground of maintainability and on facts as well taking the grounds that initially 98 employees of the respondent-University were deputed for election duty and on representation having been made, now the revised list has been issued containing 29 employees of the respondent-University out of which, only 10 are from teaching staff and 19 are from non-teaching staff who are working as Assistant Engineer, A.R., P.A., U.D.C., Assistants etc. It was further mentioned that the petitioner-Association is “nobody” in the eyes of law as it has not been recognized by the respondent-University.

6. Learned counsel representing respondent-State contended that keeping in view the volume of work load and availability of the staff, minimum number of teaching staff has been asked to perform election duty and as per law, every employee is bound to perform the election duty.

7. Learned counsel for the respondents also contended that the writ petition filed by the so-called petitioner-Association is not maintainable. It was also contended that otherwise, no teaching work will suffer on the date of polling i.e. 19.9.2018, which has already been declared as holiday and that way studies of the students shall not suffer in any way.

8. Learned counsel representing the respondents, on the basis of written reply filed by the respondent-University contended that the University has no objection regarding passing of the impugned order whereby some of the employees have been deputed for election duty and the respondent-University does not recognize the petitioner-Association. As such the present writ petition deserves to be dismissed.

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9. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the writ petition filed by the petitioner-Association itself is not maintainable on the ground that the same is not recognized by the respondent-University. On the basis of reply having been filed by respondent No.1, now the facts are clear to the extent that earlier 98 employees were deputed on election duty and after having considered the representations made by the petitioner-Association, now only 29 employees of the respondent-University are being deputed. Out of them, only 10 employees are from teaching wing and remaining 19 are from non-teaching wing of the respondent-University. Keeping in view the total volume of work and processes involved in the elections, the District Electoral Officer is to consider the resources available at his command and to discharge the constitutional duty of holding of elections and for that purpose, any employee could be deputed on election duty as per provisions of Section 23 of the Punjab State Election Commission Act, 1994 (for short, **"the Act"**). The same is extracted below:-

"23. District Electoral Officer, Electoral Registration Officer, Returning Officer, Assistant Returning Officer, Presiding Officer and Polling Officer deemed to be on deputation to the Election Commission. - District Electoral Officer, Electoral Registration Officer, Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer and any other officer, appointed under this Chapter, and any Police Officer designated as such 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

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accordingly, such officer shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.”

10. As regard to the contention raised by learned counsel for the petitioners that some of the teaching faculty are getting higher basic pay than the Deputy Commissioner and they are not subordinate to him, is not tenable because as per Section 23 of the Act any employee of any establishment when deputed on election duty will be deemed to be on deputation to the Election Commission and such officer during that period would be subject to the control, superintendence and discipline of the Election Commission. Deputing of employees of the respondent-University is performance of constitutional obligation who have been called upon to perform such a duty by the Election Commission. The impugned order has not been issued by respondent no.2 in the capacity of Deputy Commissioner, but the same has been issued in discharge of duties as District Electoral officer.

11. On the basis of material available on record, the Court is convinced that deputing of staff of the respondent-University including 10 from the teaching faculty, the teaching work of the respondent-University is not going to be adversely effected because the election process is of one day on 19.09.2018 itself, on which date, holiday has been declared by the State Government and there will be no teaching work in the respondent-University.

12. Hon`ble Apex Court in **Election Commission of India's case (supra)** was seized of the matter and observed that as far as possible members of teaching faculty should not be put on electoral duty so that the

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teaching work may not suffer, but there is no bar that the teaching faculty cannot be put on election duty. As per the plea taken by learned State counsel, the Deputy Commissioner being conscious of his duties as District Electoral Officer as well as the total volume of work involved in the election process, deputed minimum number of members from the teaching faculty, i.e., 10 in the present case and the teaching work of the respondent-University shall not be adversely effected in the light of the fact that 19.09.2018 shall be a holiday and the election process will be only one day's affair.

13. As regard to the contention of learned counsel for the petitioners and relevant Section 16 of the Act that some Associate/Assistant Professors are getting higher basic pay than the Deputy Commissioner and they are not subordinate to him has practically no relevance in this case because the employees have been asked to perform the election duty which is a constitutional obligation and District Electoral Officer, as per Section 23 of the Act, can ask any employee to perform such duties, drawing of higher basic pay or Grade Pay becomes more or less insignificant in such like matters because the District Electoral Officer is discharging the constitutional duties.

14. As regard to deputing a public servant on election duty, Hon`ble Apex Court in **Election Commission of India's case (supra)** observed as under:-

“21. The constitutional and statutory scheme would lead to a realistic conclusion when emphasis was laid that it is for the Central Government and the State Governments alone

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to provide for the requisite staff. How would they do it is one thing. It may be by fresh recruitment for the purposes for which the staff are requisitioned or for deployment or by way of deputation. Indisputably, there are certain functions which may be performed only by the Government staff. For the said purposes they may be sent on deputation e.g. Sections 21 and 22 of the 1951 Act provides for the Returning Officers and Assistant Returning Officers who must be an officer of Government or of a local authority. therefore, their services can be requisitioned under Clause (6) of Article 324 of the Constitution of India as also Section 159 of the 1951 Act. The Election Commission or the Regional Commissioner, as the case may be, is also entitled to request for requisitioning the services of the persons in the employment of the Government or the local authority and others who may not be officers of the Government or the local authority. The services of other employees who are not officers may also be requisitioned. The Parliament was aware that in an election, requisition of services of the employees of the Central Government or the State Governments may prove to be insufficient and, thus, a direction for appointment of the staff from amongst the officers of the local authority and others have been made.”

15. Hon`ble Apex Court has further observed in the above cited case that the Election Commission has to depute teachers on holidays and non non-teaching days and non-teaching hours and the teachers should not ordinarily be put on duty on teaching days and within teaching hours. This aspect has already been taken care of in this case because firstly, minimum members of teaching faculty has been asked to perform election duty and secondly, their presence for the process of election would be

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required as due to declaration of holiday on 19.9.2018, it will be a non-teaching day and non-teaching hours.

16. In view of the above, there is no merit in the present writ petition and the same stands dismissed

(SHEKHER DHAWAN)
JUDGE

September 17, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes