

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-19773-2015 (O&M)
Date of decision : 19.09.2019**

Ashok Kumar and others

...Petitioner(s)

Versus

Election Commission of India and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vishneet Singh, Advocate,
for Mr. P.S. Khurana, Advocate,
for the petitioners.

Ms. Anju Arora, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J. (Oral)

Prayer in the instant petition, *inter alia*, is for issuance of directions to respondent Nos.3 to 5, not to assign the duties as Booth Level Officer pertaining to Elections, Census and other duties on working days and gazetted holidays.

It is contended that the petitioners are working as teachers in the Department of School Education, Punjab. The petitioners have been assigned the duties of Booth Level Officers by respondent No.3. The duties of Booth Level Officer *inter alia* include (i) revision of voter list; (ii) preparation of fresh votes and thereafter voter list; (iii) conducting the elections for Parliament, Legislative Assembly and Local Bodies; (iv) data entry and recording of issues regarding elections. The Booth Level Officers are not provided with any facility like stationary, photostat, vehicle, mobile phones etc. while performing all such duties. The petitioners have been

assigned the duties on working days and even during school hours. Learned counsel refers to instructions dated 14.08.2012 (Annexure P-5), issued by the Director, School Education, Punjab, to the effect that the teachers may not be deputed as BLOs or for other non-educational works during school hours, however, the said instructions have been blatantly violated. Cites ***Election Commission of India Vs. Saint Mary's School and others, (2008) 2 SCC 390.***

On the other hand, learned State counsel submits that respondent No.4 vide letter dated 06.02.2015 (Annexure R-1) has already directed and circulated the judgment of Hon'ble the Supreme Court in ***Saint Mary's School's case (supra)*** for strict compliance. Subsequent thereto, the respective District Education Officers have certified that in normal course, the teachers are not assigned duties relating to election work on teaching days and within teaching hours. It is further contended that the Right to Children of Free and Compulsory Education Act, 2009 (for short, 'the Right to Education Act') stipulates that the teaching personnel can be deployed for the purposes of population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament as the case may be. Therefore, the petitioners cannot be totally exempted from the election duties.

Heard.

The issue in hand has already been addressed before Hon'ble the Supreme Court in ***Saint Mary's School's case (supra)***, wherein, their Lordships have observed as under:-

“27. The provisions of the 1950 and 1951 Acts

although were enacted in terms of Article 324 of the Constitution of India, the same must be given restricted meaning. Holding of an election is no doubt of paramount importance. But for the said purpose the education of the children cannot be neglected. Therefore, it is necessary to maintain the balance between the two.

28. With an advent of technology requisitioning of a large number of people for carrying out the election may not be necessary. We may notice that the Election Commission has different roles to play. Preparation of an electoral rolls, revision of electoral rolls, when objections are filed, hearing the parties and determining the objections, enumeration of the voter list and to hold elections as and when due. The Election Commission and its officers, in our opinion, can formulate an effective scheme to see that the services of a large number of teachers are not required. The State admittedly is not in a position to perform its sovereign function of imparting education. Such functions necessarily are required to be performed by the private actors. Those students who are in a position to get admission in the public schools presumably would also be in a position to appoint tutors whereas those students who are admitted to the Government schools ordinarily would be from the middle or lower middle class or poor families. The state of primary education in India is in deplorable condition. There admittedly is a heavy drop outs from the schools particular from amongst the girl schools. The question if right to exercise franchise whereupon the emphasis is laid

by Mr. Venugopal is an important one, right to education is also no less important being a fundamental right.

29. The Human Rights Conventions have imposed a duty on the Contracting States to set up institutions of higher education which would lead to the conclusion that the citizens thereof should be afforded and an effective right of access to them. In a democratic society, a right to education is indispensable in the interpretation of right to development as a human right. [See Leyla Sahin v. Turkey, decided by the European Court of Human Rights on 10th November, 2005]. Thus, right to development is also considered to be a basic human right.

30. It is probably with that end in view the counsel appearing for the Election Commission had also joined the other counsel appearing for the respondents, to suggest the court that the services of the teachers may not be requisitioned on the days on which the schools are open. Submission of Mr. Venugopal that such a contention had not been made by the learned counsel appearing on behalf of the Election Commission cannot be accepted.

31. We have, however, considered the matter at some details as the question in regard to the application of the constitutional right and in particular fundamental right cannot be thwarted only by reason of a concession made by a counsel.

32. We would, however, notice that the Election Commission before us also categorically stated that as far as possible teachers would be put on

electoral roll revision works on holidays, non-teaching days and nonteaching hours; whereas non-teaching staff be put on duty any time. We, therefore, direct that all teaching staff shall be put on the duties of roll revisions and election works on holidays and non-teaching day. Teachers should not ordinarily be put on duty on teaching days and within teaching hours. Non-teaching staff, however, may be put on such duties on any day or at any time, if permissible in law.”

In pursuance of the aforesaid directions rendered by Hon'ble the Supreme Court, respondent No.4 vide letter dated 06.02.2015 (Annexure R-1) have already issued instructions to the effect that the teachers may be deputed for non-educational duties only after school hours and on holidays. In compliance thereof, the respective District Education Officers have certified that in normal course, the teachers are not being assigned duties relating to election works on teaching days and within teaching hours.

Furthermore, the Right to Education Act has also been enacted by the Central Government, Section 27 whereof reads thus:-

“27. No teacher shall be deployed for any non-educational purpose other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be.”

A perusal of the above makes it clear that even the Right to Education Act has carved out an

exception in the matter of deputing the teachers for non-educational duties and specifically provides that the teachers may be deputed for election and census duties. It is to be noted that usually the elections of Parliament and the State Legislatures or other Constitutional bodies are held once in five years. A large number of personnel are required to be engaged in the smooth conduct of such elections. The teaching personnel being qualified and large establishment, are put on election duties by the State Election Commissioner. Reasonable remunerations are also paid by the State Election Commission. Thus, the teaching personnel like the petitioners, cannot be given total exemption from performing the duties relating to the elections. However, the election duties may not be assigned beyond the instructions dated 06.12.2015 (Annexure R-1) and the purpose indicated in the Right of Children to Free and Compulsory Education Act, 2009.

In view of the above discussion, this Court does not find any merit in the instant petition and the same is hereby dismissed.

19.09.2019

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**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No