

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15209 OF 2022

1. Shivaji University Teachers Association]
(SUTA), Association registered under]
Trade Unions Act, 1926 through its]
Secretary Dr. Dattatray Nilkanth Patil,]
having its registered Office at Plot]
No. 47, Ambai Defence Colony,]
Kolhapur 416002]
2. Suresh Nanaso Pol, Age 58 years]
Occupation:Service, R/at Kore I Con, 53,]
Chandani Chowk, Gulmohar Colony,]
Sangli- 416 416]
3. Shivaji Shankar Kamble, Age 56 years]
Occupation:Service, R/at Opposite Zunnar]
Wadi Road, Kale Plot Parisar, Kavathe]
Mahankal, District Sangli Kore I Con, 53,]
Chandani Chowk, Gulmohar Colony,]
Sangli- 416 416]
4. Netaji Subanrao Pol, Age 52 years]
Occupation:Service, R/at Tissangi,]
District Sangli 416 405]
5. Mohan Govind Londhe, Age 58 years]
Occupation:Service, R/at Vidyanagar, Kavathe]
Mahankal, District Sangli 416 405]
6. Kiran Laxman Sakat, Age 37 years]
Occupation:Service, R/at Sakat Kutchi]
Sangli 416 405]
7. Baban Tukaram Jadhav, Age 53 years]
Occupation:Service, R/at Near Kolekar Hospital]
Kavathe Mahankal Sangli 416 405]

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SHARAD
PATIL

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8. Sambhaji Shreepati Shendge, Age 54 years]
Occupation:Service, R/at Potdar Plot, Vidyanagar,]
Kavathe Mahankal Sangli 416 405]
 9. Arun Pandurang Bhosale, Age 58 years]
Occupation:Service, R/at Ranjani, Sangli 416 411]
 10. Sanjay Babaso Patil, Age 58 years]
Occupation:Service, R/at Savarde Road, Peth]
Bhag, Mali Galli, Chinchani, Sangli 416 312]
 - 11 Subhash Vithal Patil, Age 57 years]
Occupation:Service, R/at P Vidyanagar,]
Kavathe Mahankal Sangli 416 405]
 12. Tanaji Ganpati Patil, Age 58 years]
Occupation:Service, R/at Kavathe Mahankal]
Sangli 416 405]
 13. Avinash Ashok Kamble, Age 37 years]
Occupation:Service, R/at infront of S.M. High]
Axhook, Vidyanagar, Kavathe Mahankal]
Sangli 416 405]
 14. Ramchandra Annappa Dudhal, Age 56 years]
Occupation:Service, R/at Vidyanagar,]
Kavathe Mahankal Sangli 416 405] ...Petitioners
- Versus*

1. Chief Election Officer, Maharashtra]
State Election Commission, Mumbai, First Floor]
New Administrative Building, Hutatma Rajguru]
Chowk, Madam Cama Road, Mumbai-400 032]
2. The District Collector alias District]
Election Officer, Office of District Collector]
Sangli, District Sangli 416 405]
3. The Tahsildar and Election Officer, Taluka]
Kavathe Mahankal, District Sangli 416 405]

4. The State of Maharashtra] ...Respondents

Mr. C.G. Gavnekar a/w Mr. Ashutosh Gavnekar for the Petitioners.
Mr. S.B. Shetye a/w Mr. Akshay Pansare and Mr. Vikrant Dave for
Respondent No.1-State Election Commission.
Ms. K.N. Solunke AGP for the State.

**CORAM: R. D. DHANUKA AND
M.M.SATHAYE JJ.**

DATE : 12th DECEMBER 2022

JUDGMENT [PER : R.D.DHANUKA, J.]

1. By this Petition filed under Article 226 of the Constitution of the India, the Petitioners/Association seek writ of mandamus against respondent no. 3 for quashing and setting aside impugned orders all dated 25th November 2022, passed by respondent no. 3 requisitioning the services of petitioners no. 2 to 14, for election works mentioned in the impugned notice.

2. The case of the petitioners is that the Petitioners employees are working in the college affiliated to Shivaji University. Petitioner nos. 2 to 14 are working under the control of Shivaji University and are required to discharge their duties under the provisions of Universities Act and Statues framed thereunder.

3. Shivaji University by communication dated 13th November 2022, has assigned the work to the teachers for conducting various examinations mentioned in the said order. Since the Tahashildar issued various notices annexed as Exhibit A to the Petition, calling upon these teachers to attend the election duties of gram panchayat election proposed to be held on 18th December 2022, the petitioners filed this petition, impugning the said notices issued by the Tahasildar.

4. Mr. Gavnekar, learned counsel for the petitioners vehemently urged that the petitioners are working with college which is a private college and controlled by a Trust. The petitioners/employees are not employees under the control of Central Government or State Government. It is submitted that the College is not established under any Central Act or State Act.

5. The disciplinary authority of the petitioners is the employer of the petitioners and not the election authority. Learned counsel for the petitioners placed reliance upon Section 159 of the Representation of the People Act, 1950. He also placed reliance

upon the Judgment of the Supreme Court in case of ***Election Commission of India Vs. State Bank of India Staff Association Local Head Office Unit, Patna and Others***¹ and more particularly paragraph no. 20 of the said judgment, in support of his submission that the Hon'ble Supreme Court after adverting to Article 324 of the Constitution of India and Section 159 of the Representation of the People Act, 1950, has clearly held that non Government employer cannot be called for election duties.

6. Learned counsel for the petitioners vehemently urged that the corrigendum issued by the State Government on 2nd March 1995 and 18th July 2018 relied upon by the respondents and more particularly in paragraph no. 2(v) of the State Election Commission order dated 2nd March 1995 (v), does not include the management of the college who is the employer of the petitioners in any manner whatsoever.

7. Mr. Shetye, learned counsel for respondent no. 1, on the other hand, relied upon Article 243-K(4) of the Constitution of India and Section 10A of the Maharashtra Village Panchayats Act, 1959 and submitted that the State Election Commission is empowered to call

1 1995 Supp(2) SCC 13

for services of the staff members of the other institutions, in view of the fact that State Election Commission does not have sufficient staff members for conducting the election, on the day of polling and thereafter. He distinguished the Judgment of the Supreme Court in case of *Election Commission of India Vs. State Bank of India Staff Association Local Head Office Unit, Patna and Others* (supra) relied upon by Mr. Gavnekar, learned counsel for the petitioners and submitted that the said judgment will not assist the case of the petitioners on the ground that in this case specific powers have been prescribed to issue such directions under Article 243-K(4) of the Constitution of India and Section 10A of the Maharashtra Village Panchayats Act, 1959.

8. It is submitted by learned counsel that petitioner nos. 2 to 14 have already attended the training on 6th December 2022 and 12th December 2022 which was a preparatory training before the date of polling which is proposed to be held on 18th December 2022. He submitted that all these petitioners have already attended the training on 6th December 2022 and are bound to attend the training on 12th December 2022 and 17th December 2022. It is submitted

that at this stage, no interference in the impugned orders shall be warranted.

9. A perusal of the averments made in the petition indicates that petitioner nos. 2 to 14 are the teachers as defined under the Maharashtra Public Universities Act, 2016 and are employed in Padmabhushan Vasantodada Patil Mahavidyalaya, Kavathe Mahankal, District Sangli. It is an admitted position that the said college is affiliated to Shivaji University, which is governed by the provisions of Maharashtra Public Universities Act, 2016. In paragraph no. 5 of the petition, it is averred by the petitioners that since they are employed in a college affiliated to Shivaji University, they are under the control of Shivaji University and are required to discharge their duties under the provisions of the Universities Act and Statutes framed thereunder.

10. It is thus clear beyond reasonable doubt that petitioner nos. 2 to 14 are admittedly covered by the definition of teachers under the provisions of Maharashtra Public Universities Act, 2016 and said college is affiliated to Shivaji University. Each of these petitioners

are under control of Shivaji University and are required to discharge their duties under the provisions of Universities Act.

11. In this backdrop, we have to consider whether the impugned notices Exhibit A are issued by exercising powers prescribed by any of the provisions of law or not. Article 243-K(4) of the Constitution of India provides for elections to the panchayats. In the said Article it is clearly provided that subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the panchayats. Admittedly the elections proposed are in respect of the panchayats.

12. Under Section 10A of the Maharashtra Village Panchayats Act, the State Election Commission is the authority under whose superintendence, direction and control, the preparation of the electoral rolls for conduction of all elections to the panchayats are held. It is provided under section 10A(4) that notwithstanding anything contained in this Act and the rules, the Commissioner may issue such special or general orders or directions which may not be

inconsistent with the provisions of the Act for fair and free elections. Under Section 11 of the said Act, the election to constitute a panchayat has to be completed within time prescribed under the said provisions.

13. In this case, the Tahasilar and Taluka Executive Officers have issued requisition of these petitioners for attending the election duties proposed to be held on 18th December 2022. The authority has exercised the power under the provisions of the Maharashtra Village Panchayats Act, 1959. In our view, powers exercised by the authority, are rightly exercised under the provisions of Maharashtra Village Panchayats Act and more particularly under Section 10-A of the Maharashtra Village Panchayats Act. Such powers can be exercised under section 10A of the Maharashtra Village Panchayats Act, in view of the powers conferred upon the State authority under Article 243-K(4) of the Constitution of India.

14. The Hon'ble Supreme Court in case of ***Election Commission of India Vs. State Bank of India Staff Association Local Head Office Unit, Patna and Others*** (supra) which has been pressed in service by

learned counsel for petitioners, has dealt with Article 324 of the Constitution of India and also provisions of the Representation of the People Act, 1950. While construing these provisions, the Hon'ble Supreme Court laid down guidelines as to when the staff under control of the Hon'ble President or the Hon'ble Governor concerned can be called for election duties.

15. In our view, Mr. Shetye, learned counsel for respondent no. 1 rightly invited our attention to the definition of "election" under section 2(d) of the Representation of the People Act, 1950 which provides, 'election means an election to fill a seat or seats in either House or Parliament or in the House or either House of the Legislature of a State other than the State of Jammu and Kashmir.' In our view, Section 19 of the Representation of the People Act, 1950, invoked by the Petitioners in respect of panchayat election is totally misplaced. The said provisions of the Representation of the People Act, 1951, do not apply to Panchayat election. On the similar ground Judgment of the Supreme Court pressed in service by learned counsel in case of *Election Commission of India Vs. State Bank of India Staff Association Local Head Office Unit, Patna and*

Others (supra) would not assist the case of the Petitioners. Be that as it may; the Hon'ble Supreme Court has clarified that if the State Election authority has any power under the State act, such powers can be exercised subject to the provisions of the State Act.

16. In this case, the employer of the petitioners are affiliated to the university which is constituted under the provisions of the said Act.

17. So far as submissions of learned counsel that paragraph no. 2 of the State Election Commission order dated 2nd March 1995, which is replaced by notification dated 18th July 2018 and more particularly, 2(v) would not apply to the facts to this case is concerned, in our view, there is no merit in the submissions of the learned counsel. Employer of the petitioners is an undertaking established under an Act and has been admittedly granted aid by the State Government. The said college thus would be governed by paragraph 2(v) of the State Election Commission's order dated 2nd March 1995, duly amended by notification published on 18th July 2018.

18. Mr. Gavnekar, learned counsel for the petitioners did not dispute that petitioner nos. 2 to 14 have already attended the training held on 6th December 2022 and are going to attend the training today i.e. on 12th December 2022 and 17th December 2022. The polling is already fixed on 18th December 2022.

19. Part of the impugned orders are already complied with and since the election is proposed to be held on 18th December 2022, we are not inclined to interfere with the impugned orders at this stage, on this ground only.

20. The writ petition is devoid of merits and is accordingly dismissed. No order as to costs.

[M.M.SATHAYE,J.]

[R. D. DHANUKA, J.]