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01.05.2024
Ct.238

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 11567 of 2024

Sri Kaushik Bandopadhyay & Ors.

-vs-

The Election Commission of India & Ors.

with

WPA 11572 of 2024

Dr. Swapan Kumar Manna & Ors.

vs-

The Election Commission of India & Ors.

with

WPA 11576 of 2024

Sri Satya Prakash Tiwari & Ors.

vs-

The Election Commission of India & Ors.

with

WPA 11672 of 2024

Sumita Mallick & Ors.

vs-

The Election Commission of India & Ors.

Mr. Pratip Kumar Chatterjee

Mr. Arabinda Manna

.....for the

petitioners.

(in item nos. 4 to 7)

Mr. Suman Ghosh

Mr. Pannalal Bandopadhyay

...for the State

(in item nos. 4)

Mr. Amitava Chowdhury

Mr. Parijit Som

... for the State (in item no. 5)

Mr. Rajat Dutta

Mr. Pabitra Bhowmick

... for the State (in item no.6)

Mr. Munmun Ganguly

Mr. Parikshit Goswami
.... for the State (in item no.7)

Mr. Anuran Samanta
... for the ECI
(in item nos. 4 to 7)

Ms. Sonal Sinha
Ms. Shabnam Farooqui
Ms. S. Barai ... for the State Election
Commission
(in item nos. 4 to 7)

Let the names of Mr. Suman Ghosh, learned advocate, along with Mr. Pannalal Bandopadhyay, learned advocate representing the State, be incorporated in the order dated 29th April, 2024.

In view of the common facts and legal issues involved in these four writ petitions they are taken up together for hearing and disposed of by this common order.

The petitioners question their engagement as Presiding Officers for the upcoming Lok Sabha General Election, 2024. They are working as Associate Professor/Assistant Professor at Bijay Krishna Girls' College, Howrah.

The petitioners submit that the assignment of their duty as the Presiding Officers is not commensurate with their pay scale and position. They submit that they have no difficulty in discharging the election duties, provided they are appointed as Micro Observers or Sector Officers.

Learned advocate appearing for the petitioners has relied upon a judgment passed by a Single Bench of High Court of Punjab and Haryana in CWP No. 20802 of 2014 (Lucky Sharma Vs. State of Haryana) to argue that post of Sector Officers and Micro Observers are superior to the post of Presiding Officers. The petitioners have relied upon a notification dated March 19, 2024 issued from the office of the

Assistant Registration Officer, Howrah Uttar AC, to demonstrate that some Government Officials with lesser scale of pay and inferior position have been assigned the duties of the Sector Officers and Assistant Sector Officers.

Mr. Anuran Samanta, learned advocate appearing on behalf of Election Commission of India on the other hand places the report submitted by the District Magistrate and District Relation Officer, Howrah to argue that the petitioners could not be engaged as Micro Observers or Sector Officers. Mr. Samanta, has relied upon a notification dated June 14, 2023 issued by the Election Commission of India. By referring Clause 3(a) to the said notification, Mr. Samanta submits that serving officials, not below the rank of Group-C of Government of India/Central PSUs can be appointed as Micro Observers in Polling Stations subject to certain conditions, retired government officials can also be appointed as Micro Observers. Serving officials not below the rank of Group-C brought in from other states may also be appointed as Micro Observers. Since the petitioners do not belong to any of the said three categories, they cannot be appointed as Micro Observers.

I do not find any reason not to accept the stand of the Election Commission of India that the petitioners who are serving as Assistant Professors or Associate Professors, do not qualify to be engaged as Micro Observers in view of the notification dated 14th June, 2023.

To examine whether the petitioners should have been appointed as Sector Officers, it is necessary to examine whether a Sector Officer holds a superior position compared to a Presiding Officer in conducting the election. A Presiding Officer is appointed in terms of Section 26 of the Representation of Peoples Act, 1951. As per the said section a Presiding Officer is appointed by the District Election Officer.

The notification dated September 19, 2008, issued by the Election Commission of India, states that a Presiding

Officer and Polling Officer shall be classified on the basis of scale of pay and their position and rank. As far as practicable, Gazetted officers will be deployed as Presiding Officers. The Presiding Officer should be of higher scale/grade in comparison to other Polling Officers of that formation. It is imperative to note that while a post of Presiding Officer is a statutory post, the post of Sector officer is a non-statutory post.

The Hand Book of Sector Officer 2023 Clause 1.1 provides as follows:

“1.1. Sector Officers/Sector Magistrates perform a pivotal role in election management and serve as a link between Presiding Officers/Polling Parties, Returning Officers and District Election Officers. Sectors Officers are responsible for election management from the day of announcement of the schedule of election till the completion of poll process. Each Sector Officer is usually in charge of 10-12 polling locations. Sector Officers are appointed by the District Election Officers generally from the pool of the State Government Officers. If required, Central Government officers can also be deployed. They are appointed well in advance (4 months before poll date) considering the important roles and responsibilities they need to perform during various pre-poll, poll day and post poll activities.”

Therefore, it is apparent that the appointing authority of both the Sector Officer and Presiding Officer is the District Election Officer. A bare perusal of Chapter 1.1 of the said Hand Book makes it clear the nature of duties of Sector Officer is completely different from that of Presiding Officer.

The duty of a Presiding Officer is conducting of poll in a polling station and report back to the Returning Officer. The Sector Officer provides logistic and materials support to the polling parties. From the nature of duty discharged by

Presiding Officer and a Sector Officer, it does not appear that a Sector Officer holds a superior position in conducting a poll. Their nature of duty is different from that of a Presiding Officer while both of them are appointed by the District Election Officer.

Therefore, I do not accept the submission of the petitioners that since some officers with a lesser scale of pay and inferior rank have been assigned the duties of a Sector Officer, the petitioners being Assistant Professors should not be appointed as Presiding Officers. It is also important to note that in his report, the District Election Officer Howrah, has provided the reason for appointing the petitioners as Presiding Officers. The relevant part of the said report is quoted below.

2. *“That in respect to Howrah District the undersigned humbly submit that there is total 4395 Polling Stations in Howrah District. For the upcoming Parliament General Election 2024 the total 5274 Polling Personnel in each category is required which includes Presiding Officer, 1st Polling Personnel, 2nd Polling Personnel, 3rd Polling Personnel i.e. total $5274 \times 4 = 21096$ considering 120%. In addition, Micro Observer is required. However, it is assumed that approximately 15% to 20% of the total Polling Personnel in each category will be exempted on the ground of medical issues, emergency services.*
3. *That, however, there was availability of 4802 Presiding Officer in the District before appointment of Teaching Staff of College/University(Associate Professor / Assistant Professor etc.)as Presiding Officer and there was shortage of 472 Presiding Officer in the District Howrah. All possible sources of Gr. A*

Govt. employee have been explored and even 432 Gr. A female employee have been used (considering 20% reserve) for Presiding Officer. Accordingly, in order to ensure free and fair upcoming Parliament General Election, 2024 and due to unavoidable circumstances and as a last resort and also in compliance with the notification no.464/INST/2009/EPS dated 16.02.2010 issued by Election Commission of India and notification No.1614(20)-SEC/IV-21-2018 dated 10.05.2018 issued by the West Bengal State Election Commission, the undersigned issued a reasoned Order dated Vide memo no. 36/2023/PGE-24/How/Prof dated 05.03.2024 for deployment of the 222 Teaching Staff of College/University(Associate Professor /Assistant Professor etc. of different colleges within Howrah District including Petitioners as Presiding Officer in upcoming Parliament General Election 2024. A copy of such Order dated 05.03.2024 is annexed herewith and marked with letter 'A'.

4. *That in terms of Notification No.464/INST/2008/EPS dated 19.09.2008 issued by the Election Commission of India, Presiding Officers and Polling Officers shall be classified on the basis of scale of pay and their post and rank. As far as practicable, Gazetted officers will be deployed as Presiding Officers. The Presiding Officer should be of higher scale/grade in comparison to other Polling Officers of that formation. Furthermore, the polling parties shall be formed out of the State Govt. employees, The Central Govt. employees including PSUs and Banks etc. shall be utilized for selecting suitable*

persons as Micro Observers. Accordingly, before deployment of Petitioners all the guidelines issued by the Election Commission of India has been properly followed by the undersigned.

5. *That it is pertinent to be mentioned here that apart from the petitioners the employees of all Govt. Offices within the district including 432 female employees (Pro)-Gr.A (including 20% reserve) have been deployed as Presiding Officer in the upcoming Parliament General Election-2024.*
6. *That due to shortage of State Govt. employees the undersigned has deployed the petitioners as Presiding Officer in upcoming Parliament General Election-2024”.*

I also find substance in the stand of the Election Commission of India that since the Sector Officers are appointed for a span four months, appointment of Associate Professors and Assistant Professors for such a long duration may hamper the academic interest of the College, where they are presently employed.

In view of the aforesaid factual position, it cannot be said that there was any arbitrariness or illegality in appointing the petitioners as the Presiding Officers for the upcoming Lok Sabha General Election 2024.

It is made clear that if the petitioners join the training and election duty for the Lok Sabha General Election 2024, show-cause notice issued against them shall not be acted upon.

Accordingly, the writ petitions being WPA 11567 of 2024, WPA 11572 of 2024, WPA 11576 of 2024 and WPA 11672 of 2024 are dismissed.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Kausik Chanda, J.)