

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 12886 of 2024

Sourav Roy Bhowmick
Vs.
Union of India & Ors.

Mr. Samrat Chowdhury,
Mr. Gouranga Debnath,
Mr. Devranjan Das
...for the petitioner

Mr. Anuran Samanta
...for the E.C.I.

Mr. Swapan Kumar Dutta,
Mr. Rajat Datta
...for the State

Mr. Subhrangsu Panda
...for the College Service
Commission

1. Affidavit of service filed in court today be kept on record.
2. The petitioner has challenged the requisition and appointment of the petitioner for election duty in the currently ongoing Parliamentary Election.
3. Learned counsel for the petitioner argues that the petitioner does not come within the purview of the expression “staff” as enumerated in Section 159 of the Representation of the People Act, 1951.
4. It is submitted that although the college, where the petitioner is serving, is a government aided college, by placing reliance on the Memorandum dated December 23, 2019, annexed at page 36 of

the writ petition, it is argued that the petitioner is merely an approved part time teacher, government approved contractual whole time teacher/guest teacher, who does not come within the purview of “employee”, as defined in Section 3(x) of the West Bengal Universities and Colleges (Administration and Regulation) Act, 2017. It is pointed out that sub-clause (xxi) of the same Section defines ‘Teacher of a College’ as a Principal, an Assistant Professor, etc., within the definition of which the petitioner does not fall.

5. Learned counsel places reliance on the several clauses of the Memorandum dated December 23, 2019 wherefrom it is evident that the petitioner is not entitled to retiral benefits and other benefits on an equal footing as regular employees of the college. In Clause 7(II) of the said Memorandum it has been provided that notional vacancies are to be created to accommodate all State Aided College Teachers are engaged as per Clause 7(I) above and these posts would be treated as personal and supernumerary ones. Thus, the said posts are not sanctioned posts.

6. Moreover, in sub-clause (IV) of Clause 7, the above category of teachers, under which the petitioner falls, has been stipulated to be required to take classes, along with works related to examination etc., as per the schedule given

thereunder, which stipulates a period of 15 hours per week.

7. Also, under sub-clause (V) of the said Clause, the benefit of the order shall be allowed to the part time teachers, contractual wholetime teachers and guest teachers who are engaged in the college on or before July 13, 2019.

8. Thus, it is argued that a comprehensive reading of the memorandum clearly shows that the petitioner is merely a contractual teacher and does not come within the purview of “staff”, as contemplated under Section 159 of the 1951 Act.

9. Learned counsel for the Election Commission of India as well as the State place reliance on an order dated August 12, 2021 issued by the Government of West Bengal, Department of Higher Education, by which the earlier memoranda, including the Memorandum dated December 23, 2019, have been superseded.

10. It is argued that several benefits have been extended to people in the same category as the petitioner, thus, almost equating them to regular staff of colleges. As such, the petitioner cannot shirk election duty.

11. A perusal of the August 12, 2021, handed over in Court by learned counsel for the Election Commission of India, however, it is seen to begin with the rider that service conditions and other

benefits for Government approved “part time teachers, Government approved contractual whole time teachers and guest teachers” engaged in different Government/Government aided colleges in the State of West Bengal are covered by the said restructuring.

12. It has been further reiterated in the second paragraph of the same that the Government Order dated December 23, 2019, which is superseded, was devoid of benefits of leaves like casual leave, medical leave, maternity leave, study leave and Swasthya Sathi Scheme, which had earlier been enjoyed by the erstwhile Government approved part time teachers, contractual whole time teachers, etc.

13. Although, from the said order dated August 12, 2021 it is found that the State has extended several further benefits to such part time teachers/contractual whole time teachers/guests teachers and changed the nomenclature of their designations, the fact remains that the petitioner is even now not a regular employee or staff of the college in question, but still remains a part time/contractual/guest teacher. As such, the petitioner, even today, cannot claim benefits, either retiral or regarding his employment or otherwise, on a parity with regular employees or staff of the college.

14. It is clear from the Order dated August 12, 2021 as well that the status of the petitioner is still merely that of a contractual teacher and, as such, the petitioner cannot be equated with staff of the college, which is aided by the State.

15. Section 159 of the 1951 Act cannot be read to be so wide as to incorporate even contractual employees of State sponsored colleges. As such, the petitioner cannot come within the ambit of Section 159 of the 1951 Act for the Election Commission of India, through its officials, to requisition and/or appoint the petitioner to do election duty.

16. However, despite the observations above, since there is a personnel crunch at the present juncture, as the election process for the current Parliamentary Elections is already ongoing, if an order is passed relieving the petitioner from election duty, a floodgate of litigation will be opened, which may give rise to adverse effects on the election process itself and stultify the same.

17. It is well-settled that within the contemplation of the Constitution of India that it is not for courts to pass orders which interdict or stop or put a spanner in the wheels of the election process. As such, the observations made above shall hold good in respect of future requisition/appointment of the petitioner and people on similar footing and shall

not affect the present deputation of the petitioner for election duty.

18. In the light of the above observations, W.P.A. No. 12886 of 2024 is allowed, thereby restraining the respondents from requisitioning or appointing the petitioner and people on similar footing and other part time lecturers/teachers on equal footing for the purpose of election duty in future.

19. However, the above observations come with the rider as indicated above that the petitioner shall do election duty for the present Parliamentary Election but shall not be requisitioned and/or appointed for such purpose on future occasions.

20. There will be no order as to costs.

21. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)