



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12206 OF 2024

NATIONAL ASSOCIATION OF TEACHERS IN HIGHER
EDUCATION AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioners : Mr. R.O. Awasarmol
AGP for Respondent Nos. 1 & 2 : Mr. S.S. Dande
Advocate for Respondent No. 3 : Mr. Alok Sharma

...

CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.

DATE : 14 NOVEMBER 2024

Per Court :

1. This matter is mentioned before us urgently for consideration. It was on board of Court No. 1 on 13.11.2024. It was removed from the board, considering the assignment. Both the parties are ad-idem that the matter lies before our Court. As the campaign for assembly election is closing on 18.11.2024, we have taken up this matter for consideration.

2. Issue notice to the respondents. Learned AGP appears for respondent nos. 1 and 2 and learned Advocate Mr. Alok Sharma appears for respondent no. 3 and waive notice. This matter is being heard finally with the consent of the parties.

3. Petitioner no. 1 is the organization of the teachers rendering services in the non agricultural universities and the affiliated colleges thereto which is espousing the cause for its members by this petition. By communication dated 05.11.2024 issued by respondent no. 2, the teachers / members of petitioner no. 1 are prohibited from participating in the election campaign of State Assembly Election. The members of the petitioner aspire to participate in the election campaign to support the contesting candidates. Impugned circular refers to government resolution dated 20.05.2010.

4. Learned counsel for the petitioner submits that neither the impugned circular nor government resolution dated 20.05.2010 can be made applicable to the teachers of non-agricultural universities or colleges affiliated thereto as those are applicable to non-teaching employees only. It is submitted that the services of the non-teaching employees of non-agricultural universities and their affiliated colleges are regulated by Maharashtra Civil Services Rules by the government letter dated 08.04.2013. Learned counsel for the petitioner relies on the order passed by the Writ Petition No. 6267/2019 to buttress the submission that teachers are entitled to participate in the election campaign. Learned counsel for the petitioner would submit that the impugned circular violates their fundamental rights.

5. Learned AGP Mr S.S. Dande appearing for respondents nos. 1 and 2 supports the impugned circular. It is submitted that the members of the teaching staff as well as non-teaching staff of

non-agricultural universities and their affiliated colleges are governed by Maharashtra Civil Services Rules. It is further submitted that orders of the co-ordinate benches referred to by the petitioners are not the binding precedent.

6. Learned Advocate Mr Alok Sharma appearing for respondent no. 3 vehemently opposes the submissions of the petitioners. He tenders on record judgment and order dated 03.05.2024 passed by the co-ordinate bench in Writ Petition No. 4640/2024, to support the proposition that if a teacher is actively associated with the political party, it may hamper the educational atmosphere of the school. He submits that education should be kept away from politics and therefore, consciously, the impugned circular has been issued.

7. Petitioner no. 1 is espousing the cause of its members who are the teachers rendering services in non-agricultural universities and their affiliated colleges. The election process of the State Assembly Election is underway. The campaign of the said election is closing on 18.11.2024. The polling is scheduled for 20.11.2024.

8. At the outset, it needs to be clarified that the service conditions of non-teaching employees of the Non-Agricultural Universities and Affiliated Colleges are governed by Standard Code (Terms and Conditions of Non-Teaching Employees) Rules of 1984, which was made applicable from 01.05.1985. As the service conditions were outdated, the higher and technical department of the state government proposed to revise those rules and the

Committee was constituted for drafting Rules, named as Common Statutes. Till the new rules are made applicable, the Maharashtra Civil Services Rules are made applicable and accordingly, government resolution dated 20.05.2010 was issued. The term of the Committee was six months which was extended up to 30.05.2013 vide government letter dated 08.04.2023. The reliance placed by the petitioner on the government resolution dated 20.05.2010 and government letter dated 08.04.2013 as such has no relevance for deciding the controversy involved in this petition.

9. Learned AGP Mr S.S. Dande has made a candid statement that the teachers of non-agricultural universities and the affiliated colleges which are receiving grant-in-aid from the government are governed by the Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as 'Rules 1979' for the sake brevity and convenience). On instructions, he states that such teachers are prohibited from participating in the election campaign. He further refers to Rules, 1979. According to him, Rule 5 of Maharashtra Civil Services Rules rightly referred to the circular in question prohibiting the teachers from taking part in politics.

10. It is not controverted by the petitioner that members of the petitioner no. 1 are either employees of Non-Agricultural Universities or the Affiliated Colleges receiving grant-in-aid. It would be necessary to refer to the following provisions of Rules, 1979 :

“5. Taking part in politics and elections.--

(1) No Government servant shall be a member of or be otherwise associated with, any political party or any organization which takes part in politics, nor shall he take part in, or subscribe in aid of, or assist in any other manner, any political movement or activity.

(2)

(3)

(4) No Government servant shall canvass or otherwise interfere with or use his influence in connection with or take part in an election to any legislature or local authority.”

11. The government servant is prohibited from being associated with the political party as well as from taking part in politics. By Sub Rule 4, a government servant is further prohibited from canvassing or taking part in any election of the legislature or the local body. Considering the express provisions in the Rules 1979, respondent no. 2 / Director is justified in issuing the impugned circular. The reference to the government resolution dated 20.05.2010 is to indicate that even non-teaching employees of such universities and colleges are covered by Rule 5 of the Maharashtra Civil Services (Conduct) Rules. Till their service conditions are finalized and culminated into a common statute, they are governed by the Maharashtra Civil Services (Conduct) Rules. We, therefore, find substance in the submissions of the respondents that there is a prohibition for the members of teaching staff as well as members of non-teaching staff from taking part in the election of the state legislature.

12. Learned Advocate Mr Alok Sharma refers to the order of the co-ordinate bench in *Ubaid Ur Rehman Ata Ur Rehman and Others Versus The Election Commission of India and Others*, in Writ Petition No. 4640/2024. In that case, the question was whether the employees of the private schools who are members of the political party or associated with a political party can be engaged for availing their services for parliamentary elections. It is contended that the employees associated with the political party are not qualified to act as polling officers or presiding officers. In that matter it was the contention of the election commission that to carry out the process of election, there was no adequate staff and care was taken for not causing the political influence by the then teachers. It was found that the political party to which the then petitioners claimed association and active membership had not filled any candidate from Jalna constituency, and therefore, the then petitioners nos. 1, 2 and 5 were treated to be qualified for entrusting the duty in the election process. So far as the remaining petitioners are concerned, it was recorded that care would be taken to assign them ancillary duties. The judgment of the co-ordinate bench in the matter of *Shrikant Subhash Pande Versus The Deputy Director of Education and Others*, in Writ Petition No. 5896/2011 was referred.

13. The co-ordinate bench quoted the observations of *Shrikant Subhash Pande* (supra) in paragraph no. 10 of the order. The observations signify the object of keeping employees away from the politics and education should not be allowed to be polluted in any manner by bringing politics. Therefore, the writ petition was dismissed following the observations in *Shrikant*

Subhash Pande's case (supra). In that context of the matter, it was held that employees of the school who are associated with the political party cannot claim immunity from engaging them in the election process.

14. The facts in the case at hand are totally different. Here the teachers of the universities and the affiliated colleges are desirous to take part in the said assembly election. In the cited judgments, employees wanted to stay away from the election process, whereas in the case at hand employees wanted to take part in the campaign in the election process. Further, the implication of MCSR Rule 5 and the government resolution dated 20.05.2010 did not fall for consideration in the cited matter. We find that the order passed in the matter of *Ubaid Ur Rehman Ata Ur Rehman* (supra) is not applicable to the present case.

15. The petitioner has also relied on the order passed by the co-ordinate bench in Writ Petition No. 545/1945. In that case, it is not made clear as to whether the teachers of the universities and colleges and the affiliated colleges were prohibited from participating in the election process. There is no reference to MCSR Rules or government resolution dated 20.05.2010. We do not find that the said order is a binding precedent. Similar is the order dated 04.10.2019 passed in Writ Petition No. 6267/2019 in the case of *Shankar S/o. Tatyaba Sangle Versus The State of Maharashtra and Others*. It was an order based on the statements made by counsel appearing for the State Election Commission. The facts in the case at hand are totally different. The said order is not helpful to the petitioners. We find no substance in the petition.

16. Writ Petition is dismissed.

[SHAILESH P. BRAHME, J.]

[S.G. MEHARE, J.]

Thakur-Chauhan/-