



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5887/2024

Abdul Rahman Ghulam Nabi and another Vs. State of Maharashtra and others

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Mr. R.D.Karode, Advocate for petitioners.

Mr. D.V. Chauhan, Senior Advocate/Government Pleader with Mr.
H.D.Marathe, AGP for respondent nos.1, 4, 5 and 6.

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CORAM : BHARATI DANGRE & ABHAY J. MANTRI, JJ.
DATE : OCTOBER 04, 2024.

P.C.:

1. In the past election of the Legislative Assembly, when the petitioner - Abdul Rahman Ghulam Nabi, working as Primary Teacher in the Municipal Corporation, was assigned with the election duty, he approached this Court and on 3rd October, 2018, it was directed that no criminal action shall be initiated against him.

It is only on 1st March, 2024, this petition came to be disposed off having been rendered infructuous, as the election was already over.

We are not sure whether the petitioner has discharged the duties assigned to him.

2. The petitioner once again has approached this Court by filing the present writ petition raising a similar grievance and praying for quashing and setting aside the order passed by the Deputy Collector (Revenue/Collectorate) Registration Officer, deploying the petitioner as Booth Level Officer, in view of the Government Resolution dated

23.8.2024, issued by the School Education and Sports Department, which segregates the educational and non-educational duties.

The learned counsel Mr. Karode representing the petitioners would place reliance upon the decision of the Division Bench at the Principal Seat in the case of **Maharashtra Rajya Prathamik Shikshak Sangh Vs. The State of Maharashtra and others** (Writ Petition No.5736/2025) dated on 8th October, 2015, where by way of ad-interim relief, a direction was issued to the respondents that they shall not compel the teachers to do the election related work of Special Summary Revision against his or her wishes and that no disciplinary action including the action of suspension shall be taken by the respondents against the teachers on account of their failure to perform election related work.

This petition came to be disposed off on 21st January, 2016, by recording that the work of preparation of National Electoral Rolls Purification and Authentication Programme is already over and a statement was made before the Court that the services of the teachers belonging to the Maharashtra Rajya Prathamik Shikshan Sangh were requisitioned only for the purposes of the said programme.

Another decision, on which Mr. Karode would place reliance upon is the case of Maharashtra **Rajya Prathamik Shikshan Sangh Vs. State of Maharashtra** [2010 (5) AIR Bom R.102], and this decision pertain to deployment of the primary teachers for survey of people below poverty line.

While making the Rule absolute, in terms of prayer clauses (a) and (b), the Division Bench clarified that if the State Government is able to trace their power to any statutory or constitutional provision, so as to compel the primary teachers to undertake the additional work, then the teaching staff can be put on the additional duty only on holidays and non-teaching days, however, the correctness and validity thereof will have to be decided on its own merits.

3. The learned Government Pleader Mr. Chauhan representing the respondent-Authorities, has invited our attention to Section 27 of the Right of Children to Free and Compulsory Education (RTE) Act, 2009, which cast a prohibition on deployment of teachers for non-educational purposes and the said provision reads thus:

"27. *Prohibition of deployment of teachers for non-educational purposes.* -

No teacher shall be deployed for any non-educational purposes 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 bare reading of the said provision would make it clear that the statute, itself contemplate that the teachers can be deputed for carrying out the actual decennial population census, disaster relief duties or the duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be.

We find answer to the contingency expressed by the Division Bench to which he had made a reference upon, since there is statutory

provision, which permits such deployment for the teachers for non-education purposes, which include the election duty.

4. The Government Pleader has also invited our attention to the decision of the Apex Court in the case of ***Election Commission of India Vs. St. Mary's School and others*** (2008) 2 SCC 390, which has rendered the following findings thus:

"31. 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.

32. 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.

33. 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 non-teaching 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 days. 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".

5. Our attention is invited by the learned Government Pleader to the comprehensive instructions regarding the Booth Level Officers issued by the Election Commission of India on 4th October, 2022, with a direction that it shall be circulated to the Chief Electoral Officers of States/Union Territories.

The said instructions contemplate appointment of the Booth Level Officers by the Electoral Registration Officers under Section 13B (2) of

the Representation of the People Act, 1950, after obtaining approval of the District Election Officer, deemed to be on deputation of Election Commission of India as per Section 13CC of the Representation of the People Act, 1950.

The said instructions clearly contemplate that the Booth Level Officers can be appointed from the suggested list of categories, Government/Semi Government employees, which is categorically inclusive of Teachers.

6. It is not for the first time that the apprehension is expressed on behalf of the teachers as on earlier occasions through their associations, they agitated their grievance, that by keeping aside their basic job of teaching, if they are to be engaged in the election duty, it would cause great academic loss to the students, as it is quite possible that the conduct of the examination in the schools may coincide or overlap with the conduct of elections or the curriculum remain to be completed.

It is for this very reason, we find that the Government of India, pursuant to the decision of the Apex Court in the case of **St. Mary's School** (supra), by referring to Section 27 of the RTE Act and the observations of the Apex Court, has issued specific guidelines, which read to the following effect:-

"The objective of Section 27 is to free teachers from deployment to non-educational assignments and enable to spend more time on school and classroom related activities. In this connection, the department has also examined the judgment dated 6.12.2007 of the Hon'ble Supreme Court in the case of Election Commission of India Vs. St. Mary's School & others and accordingly the following guidelines are issued under section 35 (1) of the RTE Act, 2009.

"Duties relating to election to the local authority or the State Legislatures or Parliament relate to conduct of elections and the consequent deployment of teachers on the days of poll and counting, the time spent on training imparted to them and collection of election material for such deployment. All other duties relating to electoral roll revisions will be undertaken on holidays and during non-teaching hours and non-teaching days.

4. The appropriate Government and local authority may utilize the services of school teachers for elections to the local authority or the State Legislatures or Parliament, as the case may be, in accordance with the aforementioned guidelines".

7. The aforesaid communication is issued in the form of guidelines under Section 35 (1) of the Right of Children to Free and Compulsory Education Act, 2009 ("RTE Act of 2009" for short) and provisions under Section 27 of the RTE Act of 2009 and clear directions are issued to the appropriate Government, that it can utilise the services of the school teachers for election duty in conduct of elections to the local authority or State Legislatures or Parliament, in accordance with the aforementioned guidelines.

8. With the aforesaid clarity, the services of the school teachers for election duty can be utilised and we see no reason why we should interfere in the policy, that is adopted for deputation of teachers for electoral duty.

Mr. Karode submits that the impugned communication dated 25.9.2024, contemplate disciplinary action under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and this hanging sword should be removed, but according to us, the said action is contemplated only, if the petitioner do not report for the duty assigned to him for the period mention in the communication dated 25.9.2024

9. In the wake of above, since we expect that every teacher, who has been assigned the election duty, shall participate in the election process, the task to be carried out under the aegis of the Election Commission and since under the statute itself such duty can be assigned to the teachers, we refuse to entertain the petition and dismiss the same, with no order as to costs.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE, J.)

Mukund Ambulkar