

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

WRIT PETITION NO.12666 OF 2024

1. National Federation of Atomic Energy
Employees (NFAEE)

A registered Trade Union and Recognized
Association of Employees in the
Department of Atomic Energy having its
Office at NFAEE Office, Opp. Niyamak
Bhavan, Anushakti Nagar, Mumbai 400094
Through its Secretary General
Mr. A. Sreedharan aged 59 years & residing
Address at A/14, Pataliputra Building,
Anushaktinagar-400094

2. The Atomic Energy Workers and Staff
Union A registered Trade Union and
Recognized Association of Employees
working in Mumbai Units of DAE and
having its office at Bhabha Atomic
Research Centre, Trombay,
Anushakti Nagar, Mumbai 400 094
Through its President
Arun Ragunath Koli, Aged 58 years &
Residing Address at Keshav Khandu House,
Room No-105, Trombay, Koliwada
Mumbai-400088

.....Petitioners

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Labour, Government of India,
Shram Shakti Bhawan,
New Delhi-110001

2. The Secretary,
Department of Personnel and Training,
Ministry of Personnel Public Grievances
and Pensions, Government of India
North Block, New Delhi-110 001

3. The Deputy Chief Labour Commissioner,
Ministry of Labour, Western Zone,
Shram Raksha Bhawan, Sion,
Chunabhatti, Mumbai 400022

4. The Secretary,
Department of Atomic Energy,
Government of India, Anushakti
Bhavan, CSM Marg, Apollo Bandar
Near Gateway of India, Mumbai-400 001

5. The Director,
Bhabha Atomic Research Centre,
Anushakti Nagar, Trombay,
Mumbai-400094

....Respondents

Mr. Ramesh Ramamurthy a/w Mr. Saikumar Ramamurthy a/w Ms. Seema Sorte a/w Priyanka Katkam for the Petitioner.

Mr. Amrendra Mishra a/w Mr. Ashutosh Mishra for the Respondent Nos. 1 2, 4 and 5.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.**

DATE : 15th APRIL, 2025

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.)

1. **Rule.** Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioners have put forth prayer clauses (a), (b), (c), (d) and (e), as under:-

“(a) That this Hon'ble Court be pleased to hold and declare that the Rule 15 of the Central Civil Services (Conduct) Rules 1964 is not applicable to the associations or trade unions whose membership is restricted to the employees working in the Department of Atomic Energy or in any Ministry or department of the Government of India and there is no requirement for seeking prior permission of the employer to become a office bearers of such association or trade union or federation.

(b) That this Hon'ble Court be pleased to hold and declare that the insistence of the DAE of a restricted tenure of 2 terms or 5 years maximum to be office bearers of such service associations/unions/federations is restrictive arbitrary and in violation of the statutory Central Civil Services (Recognition of Service Association) Rules 1993 and liable to be struck down.

(c) That this Hon'ble Court be pleased to issue a writ of mandamus or other appropriate writ, order or direction in the nature of mandamus directing the Respondents and specifically the Department of Atomic Energy not to insist upon the employees working in the said Department

to take prior permission under Rule 15 of the CCS Conduct Rules to become members or office bearers or stand for office of office bearers of recognized association and trade unions and federations in the said department and which is restricted to the employees of the said Department only;

(d) That this Hon'ble Court be pleased to issue a writ of mandamus or other appropriate writ, order or direction directing the Respondents and specifically the Department of Atomic Energy not to restrict the tenure of the office bearers of the recognized service association/unions/federations to 2 terms or 5 years maximum”

3. Petitioner No.1 is a National Federation of Atomic Energy Employees working in the department of Atomic Energy and its constituent units all over the country. It is a registered federation under the Trade Unions Act, 1926 and also a recognized association representing the non-gazetted employees in the department of Atomic Energy and its constituent Units, for several decades. The Trade Unions Registration Certificate dated 2nd February, 2000 is placed on record.

4. Petitioner No.2 is the Atomic Energy Workers and Staff Union representing the non-gazetted employees working in Bhabha Atomic Research Centre, Mumbai, a department of Atomic Energy. It is a Registered Trade Union having been issued with the Registration Certificate on 15th July, 1993.

5. The grievance of the Petitioners is the office memorandum dated 5th August, 2019, issued by the Government of India, Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training, vide which, the Under Secretary to the Government of India has imposed certain restrictions u/Rule 15(1)(c) of the CCS (conduct) Rules, 1964 (hereinafter referred to as the 1964 Rules). It is ordered that no government servant shall, except with the previous sanction of the Government, hold an elective office or canvas for a candidate or candidates for an elective office in any body, whether incorporated or not.

6. For ready reference, paragraphs 1 to 4 of the office memorandum dated 5th August, 2019, are reproduced herein under:-

“ The undersigned is directed to say that as per Rule 15 (1) (c) of the CCS (Conduct) Rules, 1964, no Government servant shall except with the previous sanction of the Government, hold an elective office, or canvass for a candidate or candidates for an elective office, in any body, whether incorporated or not. DoPT's O.M. No. 11013/9/93-Estt.(A) dated 22.04.1994 had also stipulated that no Government servant should be allowed to hold elective office in any sports association/federation for a term of more than 4 years, or for one term whichever is less. Further, according to Department of Personnel & Training's OM No. 11013/11/2007-Estt (A) dated the 13th November, 2007, the entire time of the Government servant should be available to the Government and that no activities unconnected with his or her official duties should be allowed to interfere with the efficient discharge of such duties. All

Ministries were requested to ensure that the participation of the Government servants in the activities of the cooperative societies conform to the above provisions and does not interfere with the discharge of their official duties.

2. Instances have come to notice where Government servants continue to hold elective offices in various capacities for unduly long periods. In some cases, where bye-laws of these bodies place restrictions on the number of consecutive terms a person may hold an office, Government servants are reported to have either got themselves re-elected after a gap or have got a family member/ close relative elected as a surrogate in order to keep control of such bodies. In such cases, Government servants may not be bestowing adequate attention upon their official duties and, as a result, an apprehension may arise that such Government servants also develop vested interests, particularly if the body is involved in commercial activities, directly or indirectly.

3. The policy on fixing an upper limit of the number of years for which Government servants can hold elective office in any body in their entire career has been reviewed and it has been decided that a Government servant may be allowed to hold elective office in any body, whether incorporated or not, for period of two terms or for a period of 4 years, whichever is earlier, for which prior sanction would be required when a Government servant contests an election in such body, as per existing rules.

4. It is, therefore, necessary for the Competent Authority to keep in mind all the relevant factors while granting permission under Rule 15(1) (c) of CCS(Conduct) Rules, 1964. It may also be necessary that cases of such sanctions are reviewed from time to time and permissions earlier granted revoked where Government servants have been holding office in any body, whether incorporated or not, for more than four years or in cases there are charges of corruption, adverse audit paras etc. In such cases, the Government servant concerned may be directed to resign from his office in such body immediately. He will cease to discharge any function from the date such direction is conveyed to him, irrespective of the fact whether his resignation from the body is accepted or not. This action may be taken immediately in those cases where information is already available with the Ministries and Departments. In addition, all the Ministries and Departments are also requested to obtain information from their employees in the proforma attached to this Office Memorandum for reviewing the position as well as while considering the request for sanction under Rule 15(1)(c) of CCS(Conduct) Rules, 1964 in future.”

[Emphasis supplied]

7. As such, the grievance voiced by the Petitioners is that

the Government has imposed restrictions on the servants who are members of the Petitioners union, in contesting their union elections. According to the Petitioners, this undermines the Rule of democracy and the right of union members to contest elections to various posts within the union. The Impugned memorandum dated 5th August, 2019 imposes a cap on the number of elections to be contested by a candidate, who may choose to get elected or have a family member/close relative elected over different Union bodies.

8. An apprehension has been voiced that government servants may not be bestowing adequate attention upon their official duties and as a result, such government servants would develop vested interests, if the body is involved in commercial activities, directly or indirectly. The Under Secretary, therefore, ordered that such a government employee would be allowed to hold elective office in any body, whether incorporated or not, for a period of two terms or for a period of four years, whichever ever is earlier, for which prior sanction would be required if a Government Servant desires to contest an election to such body as per existing rules.

9. The Petitioners are also aggrieved by the Office

Memorandum dated 27th February, 2020 which is a modification of the earlier Office Memorandum, concerning the cap imposed on a right to be elected. For ready reference, the modification introduced by the Office Memorandum dated 27th February, 2020 is reproduced as under:

"3. The policy on fixing an upper limit of the number of years for which Government servants can hold elective office in any body in their entire career has been reviewed and it has been decided that a Government servant may be allowed to hold elective office in any body, whether incorporated or not, for period of two terms or for a period of 5 years, whichever is earlier, for which prior sanction would be required when a Government servant contests an election in such body, as per existing rules.

4. It is, therefore, necessary for the Competent Authority to keep in mind all the relevant factors while granting permission under Rule 15(1) (c) of CCS (Conduct) Rules, 1964. In cases where the Government servants have assumed charge of elected posts prior to the issuing of O.M. dated 5.08.2019, they may be allowed to complete the full period of their current tenure, except in cases where there are charges of corruption and adverse audit paras etc."

[Emphasis supplied]

10. The department once again introduced an Office Memorandum dated 29th August, 2022. In clause 2, the Authorities now are making it mandatory for a government employee, who intends to be elected as an office bearer of his service association (a Registered Trade Union), to seek prior permission under Rule 15(1) (c) of the 1964 Rules. While applying for prior permission, the employee shall furnish the details of the office held by him/her with

any elective body, that is, association/federation/ any other elective body/ Credit Society/ Thrift Society/ Cooperative Societies etc. in his entire career. Such prior permission should be taken from the Controlling Authority, at least 30 days before the date of the election.

11. For clarity, the relevant portion of the Office Memorandum dated 29th August, 2022 is reproduced here under:-

“2. As per the OM of DoPT dated 27.02.2020, the Government servant, who intends to be elected as an office-bearer of a Service Association, has to seek prior permission under Rule 15 (1)(c) of CCS (Conduct) Rules, 1964. While applying for prior permission the Government servant shall furnish the details of the office held by him/her any elective body (i.e. Association/Federation/any other elective body. Credit Society, Thrift Society, Co-operative Societies, etc.) in his entire career (format enclosed). The applicant shall submit a self-declaration also certifying veracity of the information he has furnished as per format. In case information submitted (whole or part) is found to be incorrect later, appropriate action for violation of CCS (Conduct) Rules, 1964 will be initiated against the official concerned.

3. The application for prior permission shall be processed in a time bound manner as under:

(A) For Bodies Up to Unit Level

(i) The Government Servant shall apply for prior permission to his controlling authority (Head of Unit where the official is working/ posted) in enclosed format at least 30 days before the date of election.

(ii) The controlling authority shall forward it to the Permission Granting Authority for grant of permission or otherwise within a week of receipt of the application. Before forwarding the applications, the controlling authority shall verify service particulars (and vigilance clearance, if required) of the applicant and certify the verification in the format

given.

(iii) *The Head of the Unit will be the Competent Authority to grant permission:*

(B) For Bodies of National Level

(i) *The Government Servant shall apply for prior permission to concerned controlling Officer in the enclosed format at least 45 days before the date of election.*

(ii) *Head of Unit after scrutinizing the information shall forward the application along with Verification Certificate (format enclosed) to Heads of Office (Joint Secretary (A&A)) of the Department for prior permission at least 30 days before the date of the election.*

(iii) *Joint Secretary (A&A) will be the competent authority to grant permission.*

4. *It is necessary for the Competent Authority to keep in mind all the relevant factors while granting permission under Rule 15(1)(C) of CCS (Conduct) Rules, 1964 as the guidelines of DoP&T's OM dated 27.02.2020.*

5. *In case any deficiency comes to the notice of competent authority after election, the details of such elected office-bearers may be verified and action may be taken against the erring Government Servant accordingly.*

6. *On part of Government Servant not obtaining prior permission for holding elective office in any Association, recognized or unrecognized and also holding any elective office in any Association for more than specific period as prescribed above, would attract action under the provision of CCS (Conduct) Rules, 1964.”*

[Emphasis supplied]

12. The learned Advocate representing the department relies upon a communication dated 18th April, 2023 vide which, it is mentioned that in the 78th V. C. meeting held on 31th March, 2023, it was decided to implement the guidelines of holding elective office. He further refers to the department of Personnel and Training

(DoPT) note, issued by the Under Secretary dated 26th May, 2023 which is an internal departmental note making the Office Memorandum dated 27th February, 2020 applicable to all the Office Bearers of the service association. The logic set out in paragraph No.3 of the said note is that the Government servants should be available to the Government, and no activities unconnected with his/her official duties, should be allowed to interfere with efficient discharge of duties. All Ministries were requested to ensure that the Government servants perform and discharge their official duties, notwithstanding that they are elected to the Cooperative Societies.

13. The learned Advocate for the Petitioners relies on the order passed by the High Court for the State of Telangana, dated 26th July, 2023, wherein a challenge put forth by the same Petitioner (the Petitioner No.1 before us) was considered, as against the same Respondent (in this Petition) and it was ordered by the Court that the nomination forms be issued to the Petitioners who desired to contest the elections to the Trade Unions. When the matter was further heard on 22nd August, 2023, the Petitioners were directed to tender an undertaking that the elections results would be subject to the result in the Writ Petition. The election results were directed to

be declared.

14. In the Affidavit-in-Reply, the Respondents appear to voice a serious concern about the productivity of the elected Union Office Bearers. According to the Respondents, the Union Office Bearers would be developing vested interest and some of the employees would be consistently elected for several terms. Consequentially, they would not be performing duties faithfully and would cause loss of interest in their employment. Veteran members would continuously get elected in service associations. It is not unconstitutional or arbitrary to restrain such employees from contesting elections to any body, whether incorporated or not.

15. Rule 15(1)(c) reads as under:-

“(c) hold an elective office, or canvass for a candidate or candidates for an elective office, in any body, whether incorporated or not, or”

ANALYSIS AND CONCLUSIONS

16. Article 19(1)(c) of the Constitution of India enables a group of people to come together and form an association. Under the provisions of the Trade Unions Act, 1926, employees working in public or private sector undertakings can come together and form a

Trade Union with a minimum of seven members. The registration granted to a Trade Union, thereafter, empowers the Union to conduct the Union in accordance with the provisions of the Trade Unions Act, 1926 and its constitution. The members of the Union have a right to elect a person of their choice, in as much as, every member of the Trade Union, subject to the qualifying clauses set out in its Constitution as regards eligibility, can contest elections. An employer *per se* has no role to play with regard to the internal affairs of the Trade Union.

17. The issue brought before this Court is by the Trade Unions registered under the Trade Unions Act, 1926. This Petition is restricted to the rights of the members of the Trade Union in contesting elections and getting elected as Office Bearers of the trade Unions or any of their internal societies/bodies.

18. In a country which is administered by the Rule of Democracy and which is recognized to be one of the largest democracies in the world, no employer can be permitted to impose restrictions on the freedom of the members of a Trade Union in either contesting elections or continuing as Office Bearers of the

Trade Union, by elections or unopposed, or for canvassing someone's candidature. These issues are governed only by the Constitution of the Trade Union which is necessary under the Trade Unions Act, 1926. The number of posts available, the tenure of the post, the eligibility criteria for contesting such elections, etc. are an integral part of the constitution of the Trade Union.

19. No employer can create such service rules which would create an embargo on the terms and conditions or the clauses of the Constitution of a Trade Union. The freedom to franchise/to contest an election/select from amongst the contesting candidates/to enjoy a term prescribed under the constitution of the Union, etc., cannot be curbed by a circular or Office Memorandum of an Employer.

20. We are restricting this petition to the extent of these Petitioners who are Trade Unions duly registered under the provisions of the Trade Unions Act, 1926. There is no embargo either under the Trade Unions Act, 1926 nor has the Respondent pointed out that the Constitution of these unions has an inbuilt embargo or creates a restriction on the number of terms to be enjoyed by an elected Office Bearer. Nevertheless, the provisions as

regards the posts and their tenures, has to be prescribed under the Constitution which binds all the members of the Union.

21. Insofar as the concern of the Respondents that Union Office Bearers would indulge in union activities and would ignore their daily duties, we find an answer to this apprehension in the judgment delivered by this Court in ***Blue Star Limited, Bombay Vs. Blue Star Workers' Union and others*** (1996) Mh.L.J 596. If the employer finds that if any elected Office Bearer is not working up to the mark or is ignoring the duties for which he has been engaged, by spending more time in union activities, the employer is always within its means to take action. Notwithstanding that he is an elected Office Bearer, he has to ensure that he performs his duties diligently and does not indulge in union activities by sacrificing his official duties. In this context, the employer can always initiate disciplinary action against an errant Office Bearer. However, it is not only arbitrary, but is also undemocratic for an employer to superimpose conditions for deciding who should contest an election and for what tenure should he hold the office and for how many terms should he get elected. This is a part of the Constitution of the Union coupled with the right of an individual to contest elections of a Trade Union

as long as he is a member of the Trade Union and is not debarred or disqualified by any clause under its constitution.

22. In view of the above, limiting this Writ Petition to the extent of these Petitioners/Unions, **this Petition is allowed in terms of prayer clause (a) (b) (c) and (d)**, reproduced herein above.

23. Rule is made absolute, accordingly.

24. There shall be no order as to cost.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)