

HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)

WRIT-A No.26204 of 2021

Pronounced on : August 11, 2022

Nirbhay Singh and others Petitioners

Through : Mr. Santosh Kumar Yadav "Warsi", Advocate

v.

State of U.P. and others Respondents

Through : Mr. Manjive Shukla, Additional Chief Standing
Counsel for respondent Nos. 1, 2, 4, 5 & 6

Mr. Rahul Shukla, Advocate for respondent No.3

Mr. O.P. Srivastava, Senior Advocate with
Mr. Kaushlendra Yadav, Advocate for respondent
No.7

With

WRIT-A No.26228 of 2021

Chandani Devi and others Petitioners

v.

State of U.P. and others Respondents

With

WRIT-A No.26577 of 2021

Arati Malhotra Petitioner

v.

State of U.P. and others Respondents

**CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE JASPREET SINGH, JUDGE**

ORDER**RAJESH BINDAL, C.J.**

1. The matter has been placed before this Bench for considering the following questions referred by the learned Single Judge vide order dated November 11, 2021:

“(1) Whether the provisions of Section 27 of the Right of Children to Free and Compulsory Education Act, 2009 permit the deployment of teachers to do any kind of duties relating to elections before the issue of an election notification relating to a Local Body, a State Assembly or the Parliament under appropriate provisions of the law?

(2) Whether before or after the issue of notifications relating to elections to a Local Body, a State Assembly or the Parliament, can teachers be deployed to any kind of election-related work on teaching days or during teaching hours?”

2. The matter was referred to larger Bench for the reason that the learned Single Judge was of the opinion that the view expressed by the learned Single Judge in **Kanika Banshiwal and others v. State of U.P. and others**¹ runs contrary to the view expressed by the Division Bench in **Sunita Sharma Advocate High Court v. State of U.P. and others**².

3. The petitioners in the writ petitions claim that they are working as Assistant Teachers in various Basic Shiksha Parishad Schools in district Barabanki. They have been directed to work as Booth Level Officer by the Sub Divisional Officer of the Tehsils concerned in terms of the direction issued by the District Magistrate, Barabanki, who is the District Electoral Officer. It was claimed that the petitioners are engaged in teaching children of the age group of 6 to 14 years, for whom right to education is fundamental right as guaranteed under Article 21A of the Constitution³. In

1 2021 SCC OnLine All 755

2 2015 (3) ALJ 519

3 Constitution of India

terms thereof, the 2009 Act⁴ was enacted. The protection is sought under Section 27 of the 2009 Act.

4. Learned counsel for the petitioners submitted that Section 27 of the 2009 Act clearly provides that the teachers cannot be deployed for non educational purposes. However, this provision has three exceptions, namely, deployment in decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament. The census is normally held after a gap of 10 years. A disaster though can be at any time but it is not a regular feature. However, the elections for different bodies at the District, State and Central level are the repeated exercise. The term “election” as given in Section 27 of the 2009 Act has to be given restrictive meaning by holding that it is limited to election duty which starts after notification otherwise study of the students in the age group of 6 to 14 years will suffer. The same will be in violation of the mandate as provided under Article 21A of the Constitution.

5. On the other hand, learned counsel for election commission submitted that the Government of India, Ministry of Human Resources and Development vide letter dated September 13, 2010 had issued specific guidelines in exercise of power conferred under Section 35(1) of the 2009 Act, which are in terms of the guidelines issued by Hon’ble the Supreme Court in **Election Commission of India v. St. Mary’s School**⁵. In terms thereof, the need for electoral duty is to be balanced with the education of the children and as far as possible, the duties are to be assigned on holidays or during non teaching hours and non teaching days. He further submitted that the facts in **Sunita Sharma’s case (supra)** are distinguishable, as in the aforesaid case duties assigned to the teachers were for verification of card holding families for inclusion and exclusion under the National Food Security Act, 2013, which was not falling in each of the exceptions carved out in Section 27 of the 2009 Act. It was distinguished in **Sudhir Kumar**

4 The Right of Children to Free and Compulsory Education Act, 2009

5 (2008) 2 SCC 390

Sharma v. State of U.P. and others⁶. He further submitted that judgment of Hon'ble the Supreme Court in **St. Marys' case (supra)** holds the field in which comprehensive guidelines have been issued for assigning the election duties to the teachers. The same are being followed. As the issue raised is covered by the judgment of Hon'ble the Supreme Court in **St. Marys' case (supra)**, the reference itself is bad. He further submitted that in some cases, different types of directions have been issued. It is for the reason that the election commission was not impleaded as party, hence correct view point could not be placed before the Court.

6. Learned counsel for the State submitted that as far as teaching to Classes 1 to 5 is concerned, there are total 200 working days and 800 hours in a year. As far as Classes 6 and 7 are concerned, teaching days are 226 with 1000 hours. By deploying the teachers, in the case in hand, for carrying out duties in connection with election, Section 27 of the 2009 Act is not being violated. The words used in Section 27 of the 2009 Act are "relating to elections" and not simply "election duties". Revision of electoral roll will certainly be a duty which is related to the election. As the election process is quite important in a democracy as is evident from preamble of the Constitution. Right to vote is fundamental. Unless the electoral roll is revised periodically especially before the election, many may be deprived to exercise their right to vote. Balance has to be struck. The mandate of Hon'ble the Supreme Court in **St. Marys' case (supra)** is being followed. The questions referred to by learned Single Judge has infact been answered in **Sudhir Kumar Sharma's case (supra)**. The teaching work of the students is not being affected as, as far as possible, deployment is being made either on holidays or during non teaching hours. Revision of electoral roll is not such a frequent exercise, as the teachers remain on this duty repeatedly. It is fundamental duty of all the citizens to aid the State for holding free and fair election. Unless all the voters are registered, free and fair elections are not possible. The conduct of the petitioners shows that

6 Writ-C No.34551 of 2015 decided on July 9, 2015

while challenging their deployment for revision of electoral roll, they are seeking to escape from their responsibility towards the nation. Election is an integral part of the democratic process.

7. Heard learned counsel for the parties and perused the relevant record.

8. Section 27 of the 2009 Act, which requires interpretation by this Court, is extracted below:

“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.”

VIEW OF THIS COURT THAT TEACHERS CAN BE DEPLOYED FOR DUTIES RELATING TO ELECTION

9. In **Uttar Pradeshiya Prathmik Shikshak Sangh and others v. State of U.P. and others**⁷ the issue before the Division Bench of this Court was with reference to the duty sought to be assigned to the teachers to perform duties as Booth Level Officers and for preparation, revision, maintenance and duplication of the electoral roll/voter list. The Division Bench disposed of the petition in terms of the statement of learned counsel for the respondents that they shall put the teaching staff on duty on non-teaching days and within non-teaching hours as observed by Hon’ble the Supreme Court in **St. Marys’ case (supra)**.

10. In **Kanika Banshiwal’s case (supra)**, the Single Bench of this Court while considering the earlier judgments of this Court opined that in terms of Section 27 of the 2009 Act, the teaches can be deployed for the purposes relating to election. In the said case, the teachers were deployed to

⁷ Public Interest Litigation (PIL) No.36449 of 2016 decided on August 8, 2016

work as Booth Level Officer for the purposes of conduct of duties relating to election.

11. A Division Bench of this Court in **Sudhir Kumar Sharma's (supra)**, considered the import of Section 27 of the 2009 Act and opined that the teachers can be deployed for revision of electoral roll as the said work is part and parcel of on-going election process. Direction was issued keeping in mind the observations of Hon'ble the Supreme Court in **St. Marys' case (supra)**. Earlier judgment of this Court in **Sunita Sharma's case (supra)** was distinguished, as in that case duty assigned was different and had no relations with the elections.

VIEW OF THIS COURT THAT TEACHERS CAN NOT BE DEPLOYED FOR DUTIES RELATING TO ELECTION

12. In a short order passed in **Kuldip Singh v. State of U.P. and others**⁸, a Single Bench of this Court while referring to earlier Division Bench judgment of this Court in **Sunita Sharma's case (supra)** opined that teacher cannot be deployed for election work. Reliance was wrongly placed upon Division Bench judgement in **Sunita Sharma's case (supra)** which in fact was distinguishable where duty sought to be assigned was for verification of card holding families. There is no discussion in detail on the issue raised and arguments advanced by the learned counsel for the parties. The said writ petition was disposed of with the consent of both the parties stating that the same is covered by the judgment of this Court in **Sunita Sharma's case (supra)**.

13. The Single Bench of this Court in **Ramji Mishra v. State of U.P. and others**⁹ while considering the submission of the counsel for the petitioners that revision of voter list does not fall in any of the categories as carved out in Section 27 of the 2009 Act, vide interim order directed that they shall not be forced to perform duties as Booth Level Officer.

⁸ Writ-A No.8516 of 2021 decided on August 24, 2021

⁹ Service Single No. 16754 of 2021 dated August 5, 2021

14. In **Sunita Sharma's case (supra)**, the issue under consideration before this Court was deployment of teachers for verification of card holding families on the basis of criteria for inclusion and exclusion under the National Food Security Act, 2013. While considering the import of Section 27 of the 2009 Act, the opinion expressed was as under:

“.....Section 27 specifically contains a prohibition on the deployment of teaches for non-educational purposes. Under Section 27, 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 to the State Legislatures or Parliament, as the case may be. In view of this statutory prohibition, it is clearly unlawful and ultra vires on the part of the State to requisition the services of teachers for carrying out the verification of eligible car holding families.”

15. In the aforesaid case, the teachers were not being deployed for any work relating to election rather for verification of the eligible card holding families.

16. In **U.P. Pradeshiya Prathmik Shikshak Sangh and others v. State of U.P. and others**¹⁰, the issue under consideration before the Single Bench of this Court was deployment of teachers for verification of Ration Cards. Section 27 of the 2009 Act was considered and the opinion was expressed was “they could not be deployed for such a duty which is not in conformity with the provisions of Section 27 of the 2009 Act”.

VIEW OF OTHER HIGH COURTS THAT TEACHERS CAN BE DEPLOYED FOR DUTIES RELATING TO ELECTION

17. A Division Bench of Patna High Court in **Satyendra Kumar Sandilya v. The State of Bihar and others**¹¹ while considering the issue as to whether the teachers can be deployed for non educational purposes such

¹⁰ 2018 (11) ADJ 393

¹¹ 2011 (59) BLJR 2269

as election and census duties, while relying upon the judgment of Hon'ble the Supreme Court in **St. Marys' case (supra)** opined that there is no bar for such deployment and the authorities are required to act in terms of the provisions of Section 27 of the 2009 Act and keeping in view the directions given by Hon'ble the Supreme Court in **St. Marys' case (supra)**.

18. A Division Bench of Bombay High Court in **Umakant Ramkrushan Mahure v. The State of Maharashtra and others**¹² also considered the issue with reference to Section 27 of the 2009 Act as to whether teachers could be deployed for work relating to election of the Legislative Assembly or the Parliament. While referring to the instructions issued by the Election Commission of India in conformity with the judgment of Hon'ble the Supreme Court in **St. Marys' case (supra)**, following directions were issued:

“(i) The petitioners, who are Teachers, are covered by the provisions of section 27 of Right of Children to Free and Compulsory Education Act, 2009, can be called to perform election duty including updating of electoral rolls on holidays and in non-teaching hours.

(ii) If F.I.R. is lodged against any of the petitioners, for refusal to perform the duty during school hours, the same shall not be prosecuted. However, if the petitioners refuse to work in accordance with the instructions of Elections Commission of India, it shall be open for the respondents to continue with such actions.”

19. Similar view was expressed by Single Bench of Rajasthan High Court in **Mahesh Swami and others v. The State of Rajasthan and others**¹³.

12 Writ Petition No.6718 of 2019 decided on February 18, 2020

13 Civil Writ Petition No.17945 of 2021 decided on March 16, 2022

DISCUSSIONS

20. To answer the questions, we need to consider the import of Section 27 of the 2009 Act, which prohibits the deployment of teachers for non-educational purpose. However following exceptions have been carved out:

- decennial population census
- disaster relief duties
- duties relating to elections to the local authority or the State Legislatures or Parliament

21. The words used in Section 27 of the 2009 Act are ‘duties relating to elections’. Article 324 of the Constitution of India deals with the superintendence, direction and control of the preparation of the electoral rolls for and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice President held under this Constitution treating them to be vested in a commission referred to in this Constitution as the Election Commission.

22. Use of word ‘and’, between control of the preparation of electoral rolls for and the conduct of all elections in Article 324(1) means that preparation of electoral rolls is a prelude to conduct of elections. Thus, when given comprehensive and inclusive meaning preparation of electoral rolls is included in duties relating to elections.

23. As to what will include in the ‘duties relating to election’ need to be examined. The term ‘relating to’ was examined in detail by Hon’ble the Supreme Court in **The Executive Engineer, Gosikhurd v. Mahesh and others**¹⁴, wherein while referring to various judgments on the issue, it was opined that the expression ‘relating to’ has to be given expansive and wider meaning. Relevant para 16 thereof is extracted as under :

“16. We begin by examining the phrasing of clause (a) to Section 24 (1) of the 2013 Act. We would prefer to read the

14 (2022) 2 SCC 772

words "all the provisions relating to determination of compensation" in Section 24(1)(a) as including the period of limitation specified in Section 25 of the 2013 Act. To elaborate, the word `all' and the expression "relating to" used in Section 25 are required to be given a wide meaning to ensnare the legislative intent. The expressions "relating to" or "in relation to" are words of comprehensiveness which may have a direct as well as indirect significance depending on the context. Similarly, interpreting Section 129C of the Customs Act, 1962, this Court while giving the phrase `in relation to' a narrower meaning of direct and proximate relationship to the rate of duty and to the value of goods for purpose of assessment, did observe that ordinarily the phrase `in relation to' is of a wider import. Several cases assigning a wider import to the expression `relating to', in view of the contextual background, find reference in Gujarat Urja Vikas Nigam Limited v. Amit Gupta and Others, 2021 SCC Online SC 194. In Renusagar Power Co. Ltd. v. General Electric Company and Another, (1984) 4 SCC 679, this Court held that the term `in relation to', when used in the context of arbitration clause, is of widest amplitude and content. In Mansukhlal Dhanraj Jain and Others v. Eknath Vithal Ogale, (1995) 2 SCC 665 the expression `relating to' in the context of Small Causes Court Act, 1887 has been held to be comprehensive in nature that would take in its sweep all types of suits and proceedings which are concerned with recovery of possession. Broad and wider interpretation was again preferred in M/s. Doypack Systems Pvt. Ltd. v. Union of India and Others, (1988) 2 SCC 299 observing that the expression "in relation to" is a very broad expression which presupposes another subject matter. In M/s. Doypack Systems Pvt. Ltd. (supra), in the context of Section 3 of Swadeshi Cotton Mills Company Limited (Acquisition and

Transfer of Undertakings) Act, 1986, the expression "relating to" was held to mean 'bring into association or connection with'. The words are comprehensive and might have both direct as well as indirect significance. The decision in Gujarat Urja Vikas Nigam Limited (supra) refers to Corpus Juris Secundum, wherein the expression "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". It has been observed that the expression "pertaining to" is an expression of expansion and not of contraction. The expression "relating to" when used in legislation normally refers to "stand in some relation, to have bearing or concern, to pertain, to refer, to bring into association with or connection with". Therefore, the expression 'relating to' when used in legislation has to be construed to give effect to the legislative intent when required and necessary by giving an expansive and wider meaning. Given this trend in interpretation, the words "all the provisions of this Act relating to the determination of compensation" must not be imputed a restricted understanding of the word 'relating' only to the substantial provisions on calculation of compensation, that is, Sections 26 to 30 of the 2013 Act. Rather, the expression should be given an expansive meaning so as to include the provision on limitation period for calculation of compensation, that is, Section 25 of the 2013 Act.” *(emphasis supplied)*

24. If the aforesaid opinion on the term 'relating to' is considered, the exception as craved out in Section 27 of the 2009 Act, which allows deployment of teachers for election duty, cannot be limited to only polling of votes for election rather it will encompass within all the works relating to election, which includes revision of electoral roll as the same has direct relation with the election.

25. Prior to the enactment of the 2009 Act, the issue with reference to assignment of election duty to teachers was considered by Hon'ble the Supreme Court in **St. Marys' case (supra)**. The duty sought to be assigned in the aforesaid case was for non-educational purposes. The matter was examined in detail and it was opined that all teaching staff can be put on the duties of roll revisions and election works on holidays and non-teaching days. Para 33 thereof reads as under:

“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.”

26. In compliance of the aforesaid judgment, even the Election Commission of India has issued guidelines in detail. The same are reproduced as under:

1. Wherever teaching staff is put on duties of roll revision, the DEOs/EROs shall prescribe holidays and non-teaching days and not teaching hours as duty period for this work. Such appointees may be asked to avoid teaching days and teaching hours for undertaking the roll revision work. During roll revision, wherever the teachers are appointed as designated officers to make various Forms (Form-6, 7 etc) available to the voters and to receive the Forms from the voters, the DEOs/EROs shall prescribe a specific time during non-teaching hours for the purpose of providing and receiving such Forms.

Preferably, minimum of one hour time immediately after the closure of teaching hours can be earmarked for this purpose. Depending on the prevailing teaching hours, the DEOs/ERO shall issue specific instruction and bring the same to the knowledge of all political parties and to the public well in advance.

2. Wherever special campaign dates are prescribed during the revision period, such complaint shall invariably be held on holidays only.

3. When an intensive revision is to be ordered, the schedule for revision shall be devised keeping the availability of holidays in mind. If the door-to-door verification has to be done on teaching days, such verification may be asked to be done after teaching hours and on holidays.

4. Whenever the teachers are used as Booth Level Officer for the purpose of door-to-door verification, for finding out cases of photo mismatches in the photo roll etc, the same exercise shall be done during non-teaching hours and on holidays.

5. Whenever needed, the period for enumeration work may be extended for this purpose so that the enumeration work is carried out without hampering the teaching hours.”

27. It was pleaded that the aforesaid guidelines are being followed.

28. In our view, the judgement of Single Bench of this Court in **Kuldip Singh v. State of U.P. and others, Writ-A No.8516 of 2021 decided on August 24, 2021** does not lay down the correct law and must, as we do, be overruled.

ANSWERS TO QUESTIONS

29. **Question No.1** is answered in positive holding that the teachers can be deployed for election duty even before issuance of the notification relating to election to a Local Body, a State Assembly or the Parliament which includes work for revision of electoral roll.

Question No.2 is answered in negative holding that the teachers cannot be deployed during teaching days or teaching hours but can be on non-teaching days and non-teaching hours.

30. While answering the questions referred to by the larger Bench, let the present writ petition be now placed before the Single Bench as per roster on August 29, 2022.

(Jaspreet Singh, J.)

(Rajesh Bindal, C.J.)

Lucknow
11.08.2022
Kuldeep

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes