
(2015) 01 MP CK 0019
In the Madhya Pradesh High Court
Case No : Writ Petition No. 348/2015

Dilip Kumar	Vs	APPELLANT
State of MP		RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 51A 9(d), 51A(d)

Citation : (2015) 01 MP CK 0019

Hon'ble Judges : Sheel Nagu, J.

Bench : Single Bench

Advocate : D.P. Singh, for the Appellant; Sangeeta Pachauri, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sheel Nagu, J.—I.A. No. 318/15 seeking exemption from filing additional court fees is considered and allowed for reasons mentioned therein. Petitioners are permitted to prosecute this petition jointly.

2. This petition under Article 226 of the Constitution of India has been jointly filed by 49 petitioners, who hold the post of Professor/Assistant Professor and are working under the Higher Education Department in the State of Madhya Pradesh.

3. Short but significant question that arises in this petition is as follows:-

Whether the petitioners being Professor/Assistant Professor, who are enjoying the Pay Bands IV and III, can be deputed to discharge election duty under the Tahsildar, who enjoys comparatively much less pay scale, status and rank" Consequential question that further arises out of the abovesaid seminal question is as follows:-

If the above question is answered in negative, then why, and if the question is answered in affirmative, then to what relief, 2 the petitioners are entitled to in

the present situation where the process of election has reached an advanced stage where the last date of withdrawal of nomination is over and the polling is to be held on 05.02.2015.

4. Learned counsel for petitioners in support of his contention has relied upon the instruction SL. No. 28 of the respondent/Election Commission (Annexure C-P/5), which lays down certain principles to be followed while assigning the election duty, which in sum and substance emphasis that while assigning election duty, care should be taken of not deputing employee/officer of higher pay scale, rank and status under an employee/officer enjoying comparatively lower pay scale, rank and status. For convenience, relevant extract of the instructions are reproduced below:-

1. Adequate care should be taken by the District Election Officers in calling for names of officials from different government departments (both Central and State), PSUs, Banks, other institutions etc. The scale of pay, rank and status of officials to be requisitioned need to be set out in the requisition order itself for which the Chief Electoral Officer should set a uniform criteria for the State as a whole. Considering the varying scales of pay and rank prevailing in different organizations, an upper benchmark set by the Chief Electoral Officer would be most appropriate to avoid confusion and litigation. By way of illustration, in Group A category of employees, a level upto and including a certain rank needs to be prescribed 3 instead of calling for Group-A employees;

2. In drawing up the seniority list of officials required for election duty, the District Election Officer should take into account at the outset the pay, rank and status of the officials nominated and classify them accordingly for purposes of randomization for which detailed institutions are available. A Presiding Officer should be of higher scale/grade/rank in comparison to all Polling Officers appointed in his group.

3. In determining the rank and status of officials drawn from different pools with different pay scales the relative position of the official in his cadre/organisation may be taken into account and not merely the pay scale. By way of illustration, if a Group-D employee from any pool, even if drawing a higher scale should not be assigned duties of a Presiding Officer or Polling Officer.

5. The reliance is further placed on various orders passed by this Court contained in Annexure P/4, whereby while taking note of the Instructions issued by the Election Commission and the judicial orders passed earlier, this Court has issued direction for strict compliance of the said direction of the Commission.

6. The abovesaid instructions issued by the Election Commission are in exercise of its statutory powers under the Representative of People Act. Similar powers are vested in the State Election Commission when it holds Panchayat Elections. The sum and substance of these instructions is that officers of superior rank, status and pay scale are not deputed in election duty under officers of comparatively lower rank, status and pay 4 scale to avoid heart burning and to

achieve unhindered and smooth conduction and conclusion of the election process, which lies at the bedrock of the democratic system of governance existing in our country.

7. If an employee/officer is deputed for election duty under another employee/officer, who is inferior in rank, status and pay scale to the officer deputed, then the only grievance that may arise is that of heart burning, discontentment, discomfiture and humiliation. This kind of a posting can never lead to any adverse effect upon the service conditions of superior employee/officer.

8. Admittedly, the Service Jurisprudence recognizes the right of civil post holder not to be posted under another civil post holder enjoying lesser rank, status and pay scale. The object behind this protection available to civil post holder is to maintain the hierarchy of rank, status and pay scale in a particular service and to avoid a civil post holder enjoying junior rank, status and pay scale writing CR of a civil post holder enjoying superior rank, status and pay scale.

9. This very protection, which is available to a civil post holder in his normal service tenure can very well be borrowed and applied while testing an order of deputation of employees/officers for election duty, which is normally never more than a few weeks.

10. The said protection even in election duty is necessary to be followed so as to avoid heart burning and eventuality of an officer of inferior rank, status and pay scale recommending disciplinary action against an officer/employee of superior rank, status and pay scale in regard to some misconduct committed during discharge of election duty.

11. Having held so, this Court is now required to address the question as to whether in the given facts and circumstances of the advanced stage of process of election, is it advisable to grant any relief to the petitioners at this stage.

12. The process of three tier Panchayat elections in State of Madhya Pradesh was triggered by the issuance of the notification under Rule 28 of the M.P. Panchayat Nirwahan Niyam, 1995 on publication of the election programme on 15.12.2014. The polling for area in question is now said to be scheduled for 05.02.2015.

13. As such, at this advanced stage if interference is made and any relief is granted to the petitioners, then that will lead to disrupting and delaying the process of Panchayat election.

14. The petitioners after being deputed to election duty vide Annexure P/1 dated 26.12.2014 have undergone the requisite training on 04.10.2015 for discharging their duties as Presiding Officers/Polling Officers-I and Polling Officers-II. The Chart 6 annexed with Annexure P/1 further discloses that care has been taken by the Commission to depute only male Professor/Assistant Professor for the election duty.

15. In case this Court exercises power of judicial review to interference in the matter at this stage, the process of election shall come to a standstill and shall be postponed by a few weeks requiring new set of employees/officers to be deputed, who shall then be required to undergo training afresh to enable the stalled process of election to restart. Thus, this Court refrains from interference as it will lead to disruption and stalling the election process at this late stage.

16. Learned counsel for petitioners has relied upon the interim order passed by the learned Single Judge on 09.10.2015 in W.P. No. 57/2015, whereby the orders directing election duties to teachers and Assistant Professors have been stayed till the next date of hearing. A perusal of the said interim order passed by the Indore Bench on 09.10.2015 reflects that it is based upon the decision of a Division Bench in the case of Dr. Ranjeet Singh v. Bharat Nirvachan Aayog and Others (WP No. 1536/2004). The said decision of the Division Bench in the case of Dr. Ranjeet Singh has declined interference despite finding that Professor and Class-I Officer were deputed as Presiding Officers under Tahsildar/Naib-Tahsildar, who were 7 working as Returning Officers, on the ground that the process of election has commenced. The relevant extract of this decision in the case of Dr. Ranjeet Singh v. Bharat Nirvachan Aayog and Others (WP No. 1536/2004), which is reproduced in the interim order dated 09.01.2015 in WP No. 57/2015 by the learned Single Judge at Indore Bench of this Court, is again reproduced hereinbelow for ready reference and convenience:-

The solution is not to assign Principals and Professors and other Class-I Officers to work as Presiding Officers in constituencies where Tahsildars/Naib Tahsildars are appointed as Returning Officers, but issue of appropriate directions by the State Election Commission. However, as the election process for Panchayat elections has already commenced, we do not want to issue any instructions now, which may affect the conduct of such elections.

11. We, therefore, dispose of the petition with liberty to the petitioner to give an appropriate representation to the State Election Commission to ensure that in regard to Municipal and Panchayat elections, Class-I Officers are not assigned to work as Presiding Officers in constituencies where the Class II or Class III officers have been appointed as Returning Officers. We are sure that State Election Commission will consider the matter and issue appropriate instructions. With this observation, the petition is 8 disposed of. The deposit of Rs.2,000/- paid by the petitioner is directed to be returned to the petitioner.

17. Before parting this Court would like to remind the petitioners, who are Professors and Assistant Professors that rendering service in the process of election cannot merely be categorized as rendering service against a civil post, but is for achieving a much more sacrosanct object. Elections are the foundation of democracy in our country, which are required to be conducted periodically so that the people at large can have their representation and say in the process of governance at different levels. This process is not only important but cardinal for the very existence and sustenance of democracy. Democracy has been globally

recognized as the best form of governance. Thus for a civil post holder to render services to ensure effective and smooth conduction and conclusion of the process of election is more important and sacrosanct than merely discharging his duties on the civil post in normal course.

18. Article 51A(d) of the Constitution of India provides that it shall be the duty of every citizen of India to render national service when called upon to do so. Participating and contributing in the effectual and unhindered conduction and completion of election process is akin to rendering national service. For convenience and ready reference, the provision of Article 51A 9(d) of the Constitution of India is reproduced below:-

51A. Fundamental duties - It shall be the duty of every citizen of India - (d) to defend the country and render national service when called upon to do so. 19. In this view of the matter, the petitioners ought to rise above parochial thinking of heart burning arising out of their posting in election process under an officer of junior rank, status and pay scale and discharge their election duty by treating it to be national service.

20. This Court has no manner of doubt that the importance of the process of election being national service can be understood best by the petitioners, who are experts in the field of education in their capacity as Assistant Professors and Professors in their respective subjects.

21. In view of the above, this Court declines interference in this petition which is dismissed in limine.