
(2001) 09 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : O.W.P. No. 284 of 2001

Swadesh Mitter Bakshi

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 124

Jammu and Kashmir Government Employees (Conduct) Rules, 1971 — Rule 14(1)(2)

Citation : (2002) 4 SCT 335

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : Ravinder Gupta, L.K. Moza, V.R. Wazir, S.S. Nanda, J.P. Singh, Surinder Kour, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—Petitioner has come to this Court with a plea that respondent No. 4 who is Reader in the University of Jammu, cannot take

part in the political activity. It is stated that if he takes part in this activity, then, the respondent authorities are supposed to take disciplinary action

against respondent No. 4.

2. The argument raised by the petitioner is that the service conditions of the employees of the University are governed by the Jammu and Kashmir

Civil Service Classification Control and Appeal Rules, 1956. It is also stated that the services of respondent No. 4 are governed by the Jammu

and Kashmir Employees (Conduct) Rules of 1971. It is accordingly submitted :

3. That the respondent No. 4 cannot take part in a political activity and cannot be a member of any political party.

That in case any Government servant including respondent No. 4 takes part in any political activity, then, he renders himself liable to disciplinary

action.

4. The further submission which has been made by the petitioner is that respondent No. 4 is a public servant in terms of Section 21, subclause (15)

of the RPC and as such, in his capacity as public servant, he cannot take part in any political activity. It is also submitted that the University of

Jammu is a corporate body having a perpetual succession and being a creation of Statute is to be treated like any other Government authority.

What is sought to be urged is that if a Government servant cannot take part in any political activity, then, the same parameters should apply to the

employees of the University.

5. As specific reliance is being placed on Rule 14(1)(2) of the Conduct Rules, 1971 it would be apt to notice this provision :

14. Taking part in politics or antiseccular and communal activities (1) No Government employee shall take part in politics or antiseccular and

communal activities, or subscribe in aid of any political activities, or subscribe in aid of any political party or any organisation engaged in antisecular or

communal activities or assist in any way any political movement in the State or in any other part of India or relating to the affairs of the Union or the

State

(2) No Government employee shall permit any person dependent on him for maintenance or under his care or control to take part in, or in any way

assist, any movement or activity which is, or tends directly or indirectly to be subversive of Government as by law established in India or in the

State.

6. The stand taken by the University be now noticed.

7. A clear stand has been taken by the respondent authorities that so far as the code of conduct is concerned, it has been provided for specifically

by the University at its own level. It is stated that Statute 10A, 11 and 12 deal with the manner in which a teacher is to conduct himself. For facility

of reference, the Regulations 10A, 11 and 12 are also being reproduced below:

10A. A teacher shall :

i) perform his academic duties such as lectures, demonstrations, assessment, guidance and invigilation conscientiously and with devotion;

ii) be impartial in the assessment of students;

iii) refrain from exploiting official facilities and staff for personal ends and misuse of privileges;

iv) refrain from inciting students against other students, colleagues or administration on grounds of caste, creed, religion, race, sex, region or language;

v) refrain from raising questions of caste, creed, religion, race, sex, region or language in his relationship with his colleagues and using the above considerations for improvement of his prospects;

vii) carry out the decisions of the appropriate administrative authorities/bodies and academic bodies of the University pertaining to his normal duties

(This will not inhibit his right to express his difference with their policies or decisions : provided that the expression of opinion is made at a proper

time and place and in a dignified manner; and

viii) not divulge any confidential information relating to the affair of the University to any person not authorised in respect thereof.

11. The teacher shall devote his whole time to the service of the University and shall not without the special sanction of the Vicechancellor

previously obtained, accept any engagement or office except those relating to the examination of the Universities and Public Service Commission

and Literary contributions, or engage in any trade or business which is likely to interfere with the due performance of his/her duties or to impair

his/her usefulness as an employee of the University.

12. Except as otherwise provide for by an order of the appointing authority, no teacher shall be eligible for confirmation until he has been on

probation for such period not exceeding two years as the appointing authority may determine. During the period of probation the appointment of a

teacher shall be terminable on one month's notice by either side.

8. The counsel for the University submits that there is no express bar on an employee in the matter of taking part in a political activity.

9. So far as the first argument raised by the counsel for the petitioner is concerned that is squarely met by the ratio of decision given by a Full

Bench of Punjab and Haryana High Court in the case of Uttam Singh v. S. Kripal Singh, AIR 1976 Punj & Har 176. The Full Bench in the above

case took note of the view expressed by the Calcutta High Court in the case reported as AIR 1955 Cal 382, Sarafatulla Sarkar v. Suraja Kumar

Mondal. What was observed in para 6 of the judgment is being reproduced below :

.....the learned counsel for the petitioner, has relied on a Division Bench judgment of the Calcutta High Court in Sarafatulla Sarkar v. Surja Kumar

Mondal, AIR 1955 Cal 382, which is on identical facts and is helpful for the decision of the point of law debated before us. The question for

decision in that case was whether Rule 23 of the Government Servants Conduct Rules provided a disqualification for a Government servant to

stand for election to any of the bodies mentioned in that rule. That rule was thus similar to Regulation 25(4). A Government servant offered himself

for election to the Union Board and was elected. His election was challenged on the ground that he was ineligible to offer himself for election in

view of the provisions of Rule 23 of the Government Servants' Conduct Rules, Chakravartti, C.J., spoke for the Bench, thus :

It appears to me to be 'abundantly' clear that in so far as the `Government Servants' Conduct Rules provide for discipline and conduct (conduct

?) and, in doing so, forbid conduct of certain varieties, their aim is merely regulation of the conduct of Government servants, as such servants, and

that aim is sought to be attained by prescribing certain rules of correct conduct and laying down penalties for their breach. If a Government servant

disregards any of the Rules which bear upon discipline and conduct and conducts himself in a manner not approved by the Rules or forbidden by

them. he may incur the penalties for which the Rules provide. It cannot, however, be that any of his other rights as a citizen will be affected. Taking

the present case, if a Government servant violates the prohibition against offering himself as a candidate for election to one or another of the bodies

mentioned in Rule 23, he may incur dismissal or such other penalty as the authorities may consider called for, but the breach of the conditions of

service committed by him cannot disenfranchise him any of the rights which he has in the capacity of the holder of franchise.

While, therefore, a Government servant offering himself for election to one of the bodies mentioned in Rule 23, may bring upon himself disciplinary

action, which may go as far as dismissal, the consequence can not also be that his election will be invalid or that the validity of his election will be

affected by the breach. The disqualification imposed by Rule 23 is of the nature of a personnel bar which can be overstepped only at the

Government servant's peril as regards his membership of a service under the Government. It is not and nature of ineligibility

Further observations in paras 10 and 11 of the report are also pertinent and may be reproduced. They are as under :

What the Rule enjoins is that a Government servant shall not take part in any election and that he shall also not take part in the form of offering

himself as a candidate. The Rule does not say that a Government servant, so long as he holds a post in the service of the Government, shall be

ineligible for election to any of the bodies mentioned. The prohibition is directed at personal conduct and not at rights owned by the Government

servant concerned. Illustrations of an absolute prohibition of the nature of a real disqualification of ineligibility will be found in Sections 63E(1) and

80B, Government of India Act, 1915¹⁹ and Articles 102 and 191 of the present Constitution which deal, in both cases, with qualification for

election to the Central or the State Legislature. I am entirely unable to persuade myself that the kind of disqualification imposed by subrules (2), (3)

of Rule 23. Government Servants' Conduct Rules, is of the nature of the disqualification created by the provisions in the Constitution Acts to which

I have referred. The former is limited kind of disqualification, operating only within the sphere of Government service and indicating what acts will

constitute a lapse from conduct proper to a Government servant, but not creating a legal incompetence for doing the acts declared undesirable or

forbidden.

In my view, the fact that the appellant was at the relevant time holding a post in the service of the Provincial Government did not make him a

person ineligible for election to the Union Board. His violation of the sub rules might well have led to other unpleasant consequences and we are

informed that they did so lead, because he has since been dismissed from Government service. His right to offer himself as a candidate for election

and the validity of the election which he secured, were not, to my mind affected in any way by reopen of his being a Government servant at the

time. With respect I find myself in complete agreement with the observations of Chakravartti, C.J.

10. The precise question was considered by the Calcutta High Court. The argument put across was that as under the Conduct Rules, the

concerned employee could not take part in political activity, therefore, he could be contest the election. This argument was repelled on the

reasoning that no bar can be imposed on a Government servant in the matter of contesting election. It was, however, observed that in case, a

Government employee takes part in a political activity, then, at the most, he renders himself liable to disciplinary action. Thus, a distinction was

made in a right to take part in the political activity and the result which would ensue. The result would be that such an employee would render

himself liable to disciplinary action at the hands of the concerned employer. So far the question of taking part in the political activity is concerned, it

was, as indicated above, observed that he can take part in such a process. As such, the first argument raised by the petitioner that respondent No.

4 cannot take part in a political activity is an argument which cannot sustain.

11. So far as the second argument is concerned, it be seen that it is for the employer to take action as it may deem proper. The clear stand taken

by the respondent University in this regard is that so far as the Conduct Rules are concerned, there is no such prohibition as is being claimed by the

petitioner in the writ petition. As a matter of fact, it is stated that the University has passed a specific Resolution on 7th December, 1987. This letter

has been made part of the reply given by respondent No. 4. For facility of reference, this Resolution in so far as relevant is being reproduced

below :

Resolved that the following provision given under para 7(iv) on page 74 of the Programme of Action on ""National Policy on Education

communicated by the Additional Secretary, University Grants Commission, New Delhi vide D.O. letter No. F.1113/73(CPP) dated 631997 be

adopted in respect of University teachers also :

Teachers who are elected/nominated to Parliament or State Legislature will be required to take leave of absence during their term as member.

However. in this process they will not be losing their seniority or increments.

12. If above be the situation and in case, the employer has no objection to a person taking part in a political activity like the one in question. then, a

citizen of this country cannot seek a writ of mandamus to the effect that the concerned employee should be debarred from taking part in such an

activity or that some action should be taken against that employee. As indicated

above, the only relief which could have been granted is to direct the employer to take such action as deemed proper under the Conduct Rules. However, as indicated above, the clear stand of the University in this regard is that the Conduct Rules do not debar a teacher from taking part in the political activity. As such, if the employer chooses to do ignore and permit its employee to take part in the political activity, then, the petitioner cannot make any grievance in this regard.

13. The argument put across by the petitioner that the University is a corporate body and it being an authority for the purposes of Article 12, should be governed by those Rules and Regulations which are applicable to the Government servants. It be seen that will of a corporate body is demonstrated by Resolutions passed by it. See AIR 1954 SC 217, ViceChancellor, Utkal University v. S.K. Ghosh wherein following observations were made visavis manner in which the will of a corporate body is required to be expressed :

Though an incorporated body like an University is a legal entity it has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in its corporate capacity by resolutions properly considered, carried and duly recorded in the manner laid down by its constitution. If its rules require resolutions to be moved and passed in a meeting called for the purpose then every member of the body entitled to take part in the meeting must be given notice so that he can attend and express his views.

14. In the present case, the will of a corporate body stands expressed in the resolution passed on 7th December, 1987. The Resolution permits a teacher to take part in the political activity. In view of the above, there is no merit in this petition which is dismissed as such.