

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP (C) No. 2005/2024

CM No. 5379/2024

Zahoor Ahmad Bhat

...Petitioner(s)/Appellant(s)

Through: Mr. Shafqat Nazir, Adv.

Vs.

Election Commission of India & Ors.

...Respondent(s)

Through: Mr M. I. Dar, Adv. with Ms Sana Imam, Adv. for 1
Mr. Abdul Rashid Malik, Sr. AAG with Mr. Mohd Younus Hafiz, AC for 2,
3, 4 & 6.
Mr. D. C. Raina, AG for 5.
Mr. Mubeen Wani, Dy. AG for 7.

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE

HON'BLE MR. JUSTICE MOHAMMAD YOUSUF WANI, JUDGE

ORDER

03.09.2024

The present petition has been filed by the petitioner who is challenging *inter-alia* the vires of Rule 14 of the Jammu and Kashmir Government Employees (Conduct) Rules, 1971. The said provision prohibits a Government employee for taking part in politics or anti-secular and communal activities.

Learned counsel for the petitioner has submitted that his prayers are twofold i.e., firstly, that the Rule itself be declared ultra-vires and be quashed as it prevents the petitioner for taking part in the elections as a prospective candidate to the Legislative Assembly without resigning from his service as Senior Lecturer in Political Science in the School Education Department.

In the alternative, learned counsel for the petitioner has argued that Rule 14 be interpreted in a manner that does not prohibit a Government employee from standing for elections to the State Legislature provided that if he is elected, he would have to resign from his Government service. He has further argued that Rule 14 only prohibits that taking part in politics or anti-

secular and communal activities and does not prohibit taking part in the electoral process as a prospective candidate to the Legislative Assembly. In his support, he has placed before this Court the rules governing Government servants in Uttar Pradesh, Karnataka, Tripura and the Central Services, where the corresponding provision prohibits the Government servant from taking part in election itself. Under the circumstances, learned counsel for the petitioner has submitted that the omission of the word “elections” in Section 14 is a conscious omission in the rule.

Mr. D. C. Raina, learned Advocate General who has appeared to oppose the said petition at the very outset has drawn the attention of this Court to sub-Rule 3 of Rule 13 which according to the learned AG has to be read in conjunction with Rule 14. This argument was made in order to clarify the ambiguity in the terms “politics”, “anti-secular” and “communal activities” as these words have not been defined in the rules. Sub-Rule 3 of Rule 13 lays an embargo on the government employee from uttering, writing or discussing or criticizing in public, in any meeting or any association or body, any policy or action taken by the Government and also prohibited the Government employee from participating in any discussion or criticism. On the basis of sub-Rule 3, learned AG has submitted that participation in the electoral process and standing for election as a candidate to the UT (Legislature), is an impossibility without being critical of the existing Government/governance, existing policy of the governance for which speeches, which would be included in utterance, manifesto which would be included in writing and canvassing which would be included in “otherwise discussed or criticized in public” and as Rule 13(3) has not been challenged in the present petition, the examination of Rule 14 and whether it is *ultra-vires* is an impossibility.

Learned AG has also referred to Section 134-A of the Representation of Peoples Act, 1951 which provides for penalty for Government servants for acting as election agent, polling agent or counting agent. Learned AG has submitted that a Government servant if found acting as an election agent or a polling agent or a counting agent of a candidate at an election, shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

Learned AG has submitted that 134-A when read in conjunction with Rule 14 and Rule 13(3), prohibits the petitioner from standing for election. As regards Section 134(A) of the RP Act 1951, prima facie we are unable to agree with the learned AG as Rule 134-A is a penal provision in an otherwise regulatory statute. Penal provisions have to be construed strictly as they provide for imprisonment and the loss of liberty. Merely because, it finds a place in a regulatory statute cannot be a reason to resort to progressive interpretation of the said provision. Rule of interpretation is clear and unambiguous and Penal provisions have to be construed strictly.

Under the circumstances, this court on a prima facie appreciation of Section 134-A of the RP Act, 1951, is of the view that the penalty to be imposed is only for persons who are government servants, but acting as election agent, or a polling agent or a counting agent of a candidate and does not extend or provide any penalty for a government employee standing as a candidate himself.

Later on, Mr. Hyder Rasool, a young law graduate and Reader of this Court also drew our attention to two provisions which would be relevant for consideration in this case. Firstly, he drew our attention to Article 191 of the Constitution of India which provides for disqualification for membership for being chosen, as, and for being, a member of the Legislative Assembly or Legislative Council of a State by persons who are holding any office of profit under the Government of India or the Government of any State and, an analogous provision in the J&K Re-organization Act, 2019 and also analogous provisions of Section 27 of the J&K Re-organization Act 2019 which is in pari-materia with Article 191 of the Constitution of India.

All the views taken in this order are prima facie and they will be all subject to different interpretation by this Court itself after hearing arguments.

Notice.

Mr M. I. Dar, learned counsel with Ms Sana Imam, for respondent No. 1, Mr. Abdul Rashid Malik, learned Sr. AAG with Mr. Mohd Younus Hafiz, learned AC for respondent Nos. 2, 3, 4 and 6, Mr. D. C. Raina, learned AG for respondent No. 5 and Mr. Mubeen Wani, learned Dy. AG for respondent No. 7 accept notice.

The respondents shall file their reply within four weeks. Rejoinder, if any, be filed within three weeks thereafter.

List on 21st October 2024.

In the meanwhile, the application of the petitioner dated 7th August 2024 be considered by the competent authority in accordance with law.

(MOHAMMAD YOUSUF WANI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

SRINAGAR:
03.09.2024
Altaf

