

Court No. - 6

A.F.R.

Case :- SERVICE SINGLE No. - 26228 of 2021

Petitioner :- Chandani Devi & Ors.

Respondent :- State Of U.P. Thru. Addl.Chief Secy. Basic Education & Ors.

Counsel for Petitioner :- Vinay Misra,Nazmul Hasan

Counsel for Respondent :- C.S.C.

Connected with

Case :- SERVICE SINGLE No. - 26204 of 2021

Petitioner :- Nirbhay Singh & Ors.

Respondent :- State Of U.P. Thru. Addl.Chief Secy. Basic Education & Ors.

Counsel for Petitioner :- Santosh Kr. Yadav "Warsi",Arjun Singh Yadav,Pooja Pal,Pooja Singh,Rati Yadav

Counsel for Respondent :- C.S.C.,Anupriya Srivastava,Rahul Shukla

Hon'ble J.J. Munir,J.

Heard Mr. Vinay Misra, learned Counsel for the petitioners, Mr. Gaus Beg, learned Counsel appearing for the Basic Shiksha Adhikari and Mr. Ram Pratap Singh Chauhan, the learned Additional Chief Standing Counsel appearing for the State-respondent.

2. The petitioners are Assistant Teachers working in various Basic Shiksha Parishad Schools in the District of Barabanki. They have been detailed to work as Booth Level Officers by the Sub-Divisional Officers of Tehsils - Fatehpuri, Haidergarh and Nawabganj, District - Barabanki. acting on the orders of the District Magistrate, Barabanki, who is the District Electoral Officer.

3. The submission of learned Counsel for the petitioners is that the petitioners are teachers engaged in teaching children in the age group of 6-14 years, for whom right to free and compulsory education is a fundamental right guaranteed under Article 21A of the Constitution. The Right of Children to Free and Compulsory Education Act, 2009¹ has been enacted to further the purpose of Article 21A. Learned Counsel for

¹ for short "the Act of 2009"

the petitioners has drawn the attention of the Court to Section 27 of the last mentioned statute, which prohibits deployment of teachers for non educational purpose. Section 27 of the Act of 2009 reads :

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.

4. It is submitted that in order to give effect to the provisions of Section 27 and to ensure that these are not bogged down by Administrative Authorities, or for that matter, the Election Commission, to subserve their purpose of engaging as many hands in the process of election, this Court, from time to time, has prohibited deployment of teachers in connection with election duties. In this connection, reference has been made to the decision of this Court in **Sunita Sharma Advocate High Court v. State of U.P. & 3 others**².

5. On the other hand, Mr. Rahul Shukla, learned Counsel appearing on behalf of the Basic Shiksha Adhikari, Mr. Kaushalendra Yadav, learned Counsel appearing for the Election Commission and Mr. Ram Pratap Singh, the learned Additional Chief Standing Counsel appearing for the State-respondents submit in one voice that provisions of Section 27 of the Act of 2009 carve out a definitive exception to the rule against deployment of teachers for non-educational purpose and one of those exceptions is the deployment of teachers in connection with elections of a Local Authority, a State Legislature and the Parliament.

6. In **Sunita Sharma (supra)** a Division Bench of this Court leaned in favour of placing a liberal construction upon the provisions of Section 27 of the Act of 2009 and frowned upon the practice of deploying teachers in connection with election duties. It was held there :

The right of children to free and compulsory education between the age of six to fourteen has been statutorily recognized in Section 3(1) of the Right of Children to Free and Compulsory Education Act, 2009. This is in

pursuance of the fundamental right conferred by Article 21-A of the Constitution of India. The Act provides in Chapter IV the responsibilities of schools and teachers. Section 27 specifically contains a prohibition on the deployment of teachers 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 card holding families. The right to free and compulsory education for children below the age of 14 is a constitutionally protected entitlement which is statutorily recognized in the Act. The State is not powerless, if it requires hands for completing the work of verification by recruiting contract employees or making suitable alternate arrangements, but such arrangements cannot involve the deployment of teachers. The duties of teachers is simply to teach students. Their status cannot be reduced to that of a ministerial employee of the State. It is no answer to state, as the District Supply Officer has in the counter affidavit, that the teachers are called upon to do the work of verification as and when they are free from school duties. A teacher after the completion of the hours of work in a school is expected to spend time in preparing for the classes for the next day and to pursue his or her own process of enhancing knowledge and learning to impart education to the children. It requires no stretch of imagination to hold that burdening a teacher with duties, after school hours in carrying out ministerial duties, such as the verification of eligible families, would only detract from her ability and capacity to teach students. It is time for the State to realise, if it is serious about implementing the right to free and compulsory education for children between ages of six to fourteen in the State of Uttar Pradesh that teachers cannot be treated in such a casual and callous manner. The civility of a society is defined with reference to the value it places on education and the respect which it holds for its teachers. Those may be traditional values but fortunately, some values are eternal. The position of a teacher is a critical element in dispensing education which must be recognized, protected and observed. Such

action which has been taken by an officer of the State is clearly in violation of the duty cast upon the State. In fact, on a reading of the circular issued by the Chief Secretary on 23 January 2015, it is clear that no direction was contained therein to requisition the services of teachers. The Chief Secretary had, therefore, carefully not issued any such direction. What the District Administration has done is to follow a convenient method of requisitioning the services of teachers without the authority of law and, as we have noted earlier, it is in clear defiance of the mandate contained in Section 27 of the Act. The State must cease and desist from resorting to such unlawful behaviour.

7. In Uttar Pradeshiya Prathmik Shikshak Sangh & 3 others v. State of U.P. & 7 others³ following the decision of the Supreme Court in Election Commission of India v. St. Mary's School & others⁴ it was directed :

Learned counsel for the respondents submit that they shall put the teaching staff on duty on non-teaching days and within non-teaching hours, as observed by the Supreme Court in the aforementioned paragraph. Their submission is recorded and accepted.

8. Again, in Kuldip Singh v. State of U.P. & 3 others⁵ a learned Single Judge of this Court, sitting at Allahabad, following the decision of the Division Bench in Sunita Sharma held :

In view of the law already settled, the authorities of the State would not be justified in allocating election work to the petitioners, who are specifically engaged for imparting education.

9. In Ramji Mishra v. State of U.P. through Additional Chief Secretary, Basic Education & others⁶ a reasoned interim order was made. The learned Single Judge has observed thus :

5. It has been submitted that the revision of the voter-list does not fall in any of those categories because that does not relate to decennial population census and as the elections have not yet been notified, therefore, the deployment, as directed, is illegal and is in the teeth of the provisions of Section 27 of the RTE Act,

³ Public Interest Litigation (PIL) No. - 36449 of 2016 decided on 08.08.2016

⁴ (2008) 2 SCC 390

⁵ Writ - A No. - 8516 of 2021 decided on 24.08.2021

⁶ Service Single No. - 16754 of 2021

2009. In support of the aforesaid submission, reliance has also been placed on a Division Bench decision of this Court in **Sunita Sharma v. State of U.P. and others** : 2015 (3) ESC 1289 (All) (DB).

10. A perusal of most of these decisions by different Single Judges, some of which are reasoned interim orders, show that the decision of the Division Bench in **Sunita Sharma** has been construed in a manner that the deployment of teachers in connection with election duties is to be largely eschewed. A definition has somewhere been carved out to the effect that obligation under the exception envisaged under Section 27 for teachers commences where the election notification is issued and not before that. In some other cases, to give effect to the wider purpose of the Act of 2009, directions have been made not to deploy teachers to election duty on teaching days or during teaching hours, confining their deployment to non teaching days and on teaching days, to non teaching hours.

11. Mr. Kaushalendra Yadav, learned Counsel appearing for the Election Commission and Mr. Rahul Shukla, learned Counsel appearing for the Basic Shiksha Adhikari dispute the soundness of these authorities and say that the terms of Section 27 of the Act of 2009 do not admit of any such exception. The Statute is to be understood and read for what it says, unless there be ambiguity about the rule engrafted there or the exception to the rule. In support their contention, Mr. Shukla and Mr. Yadav have drawn the attention of the Court to a recent decision of a learned Single Judge of this Court sitting at Allahabad in **Kanika Banshiwal & 3 others v. State of U.P. and 5 others**⁷. In the said decision, the learned Judge has considered the Division Bench decision in **Sunita Sharma** as also the judgment in **Uttar Pradeshiya Prathmik Shikshak Sangh (supra)** and analysed the provisions of Section 27 of the Act of 2009 carefully. In **Kanika Banshiwal (supra)**, it has been held :

The words used in Section 27 of the Act of 2009 are 'duties relating to elections'. Article 324(1) 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.

Meaning and import of the words used in Section 27 of the Act of 2009 'relating to' have been interpreted by the High Court of Madras in case of State Wakf Board, Madras vs. Abdul Azeez Sahib and Others, AIR 1968 Madras 79 (81), wherein it is held that 'in relation to' are words of comprehensiveness which might both have a direct significance as well as indirect significance, dependent on the context. They are not words of restrictive content and ought not to be so construed.

Similarly, 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 means that preparation of electoral rolls is included in duties relating to elections.

Thus, when words used in Section 27 of the Act 2009 'relating to' are construed in terms of the law laid down by Division Bench of Madras High Court, then there is no iota of doubt that the word 'relating to' has to be given a comprehensive meaning and will include all the works relating to election where elections are notified or not and **cannot be given retrospective (sic) meaning as has been sought to be given by a co-ordinate Bench in case of Shri Krishan vs. State of U.P. and 4 Others (Writ-A No.18683 of 2019) and thus where elections are notified or not, duties of a teacher can be deployed in terms of the provisions contained in Section 27 of the Act of 2009 even for works in relations to election which in my opinion includes preparation of electoral rolls as provided under Article 324 of the Constitution of India.** Therefore, no fault can be attributed to the deployment of the petitioners in relations to the election work.

(emphasis by Court)

12. A perusal of the decision in **Kanika Banshiwal** shows that the Court has leaned in favour of reading the provisions of Section 27 of the

Act of 2009, going by the literal rule of construction and has carefully avoided resort to the mischief rule. The words "relating to" employed in Section 27, where exceptions to the rule in the Section last mentioned are carved out for deployment in connection with elections, have been regarded as wide enough to arm the authorities charged with the conduct of elections to deploy teachers relating to any kind of work concerning elections. The earlier decisions by other learned Single Judge, holding that the exception would apply once elections are notified, has not been approved as the correct interpretation of the provisions of Section 27.

13. Generally speaking, in the opinion of this Court, the literal rule or the golden rule of construction is the preferred rule and where the language of the statute is unambiguous, the rule is always a safe guide. The statute is to be read as it is, and not what it ought to be. It is in cases of ambiguities or a literal reading, leading to an absurd conclusion, that one has to look to other rules of construction like the rule in **Heydon's**⁸ case. To my understanding, the rule and the exception both in Section 27 of the Act of 2009 are very clear. The provisions of Section 27 generally puts in place a strict prohibition on deployment of teachers on non-teaching duties and then carves out exceptions in favour of certain classes of duties to which the rule prohibiting their deployment would not apply. Election to local authorities, the State Legislature and the Parliament are one of those exceptions. The exception, *prima facie*, is not couched in words that would limit the exception coming alive only after an election notification is issued, and not earlier.

14. It is well known and acknowledged that elections to these respective bodies, which form the government in a democracy, are the most solemn of duties for every citizen. There could be citizens engaged in kinds of avocations, who, under the law, cannot be spared even for the purpose of elections. So far as teachers are concerned, the legislature in its wisdom has not thought that they cannot be spared for

⁸ (1584) 76 ER 637

the performance of the solemn duty, where any work relating to elections is concerned. For other purposes, they have been spared. Notwithstanding the opinion of this Court, which accords with the opinion of the learned Single Judge in **Kanika Banshiwal** there being expressions of contrary and clear opinions by the Division Benches in **Sunita Sharma** and **Uttar Pradeshiya Prathmik Shikshak Sangh**, and the learned Single Judges in **Kuldip Singh, Ramji Mishra** on one hand and **Kanika Banshiwal** on the other, it would not be proper for me sitting singly to enter judgment, upholding one or the other view. The approved and sound course is to refer the matter to a larger Bench, where this difference of opinion may be resolved.

15. In the circumstances, the following questions are referred for consideration by a larger Bench :

(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?

16. Let the papers of both these cases be placed before His Lordship, the Hon'ble The Chief Justice for constituting a larger Bench by the Office, at the earliest.

Order Date :- November 11, 2021
I. Batabyal

(J.J. Munir, J.)
