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Court : Madhya Pradesh

Decided On : Jul-06-1983

Reported in : AIR1983MP172

Judge : G.P. Singh, C.J. and ;K.K. Adhikari, J.

Acts : [Constitution of India](#) - Articles 23, 23(2), 51A, 226 and 309; Fundamental Rule - Rule 11

Appeal No. : Misc. Petn. No. 1274 of 1981

Appellant : Devendra Nath Gupta and ors.

Respondent : State of M.P. and ors.

Advocate for Def. : S.L. Saxena, Govt. Adv.

Advocate for Pet/Ap. : K.S. Shrivastava, Adv.

Disposition : Petition dismissed

Judgement :

K.R. Adhikari, J.

1. Initially this petition under Article 226 of the [Constitution of India](#) was presented before the Gwalior Bench of this Court, but on amendment of the petition dt. 23-9-1981, the constitutional validity of Fundamental Rule 11 was questioned and

therefore, the petition was transferred for hearing to the main seat of this Court at Jabalpur in accordance with, the order passed in exercise of the powers conferred by the proviso to the Notification No. . 16/20/68-Judl. III dated 28-11-1968 under Section 51(2) of the States Recogonisation Act, 1956.

2. The petitioner Devendranath Gupta in his capacity as a teacher as well as Secretary of the Divisional Teachers Union, Gwalior, claims a writ in the nature of mandamus directing the respondents not to take any work from the teachers other than 'teaching' and claims quashing of all such instructions/orders issued by the respondents which are violative of fundamental rights guaranteed under the [Constitution of India](#) and/or violative of Article 23 of the [Constitution of India](#). The Petitioner also seeks striking down of the provisions of the Fundamental Rule 11 as unconstitutional.

3. The facts leading to this petition are that the teachers who are members Of the Union are working either as Lower Division Teachers or Upper Division Teachers in the pay scale of Rs. 169-300 and Rs. 246-460 respectively and that they have been recruited and appointed 'to teach' but very often are made to perform such duties which are not in keeping with their dignity or educational qualifications or status in the society, and more often than not, without any remuneration. The examples which have been cited are instructions issued with regard to educational survey, family planning (Annexures A and B with the petition), preparation of voters' list (Annexure C with the petition), general elections (Annexure D with the petition) and preparation of ration cards (Annexure E with the petition).

4. The main grievance according to the learned counsel, Shri K. S. Shrivastava is that these works are required to be performed by the teachers without remuneration in addition to their main job of teaching and thus amounts to 'Begar' which stands abolished by virtue of the provisions of Article 23 of the [Constitution of India](#) and as a consequence thereto, the provisions of the Fundamental Rule 11 which are as follows:--

'F. R. 11. Unless in any case it be otherwise distinctly provided, the whole time of a Govt. servant is at the disposal of the Govt. which pays him, and he may be employed in any manner required by proper authority, without claim for additional

remuneration, whether the services required for him are such as would ordinarily be remunerated from general revenues, from a local fund or from the funds of a body corporate or not, which is wholly owned or controlled by the Govt.'

are unconstitutional being pre-constitutional provisions wholly out of tune and contrary to the provisions and spirit of various service rules made under Article 309 of the [Constitution of India](#). The learned counsel relied on *People's Union for Democratic Rights v. Union of India* (AIR 1982 SC 1473) and *Sanjit Roy v. State of Rajasthan* (AIR 1983 SC 328) in support of his contentions.

5. It is further submitted that to ask female teachers, whether married or spinster, to motivate cases of opposite sex for sterilisation for the purposes of family planning is not only immoral but amounts to outraging their modesty, an act against the very nature of Indian womanhood. Before we deal with this issue, we may, however, point out at this stage, that no specific instances have been averred in the petition in this regard.

6. So far as the work pertaining to preparation, of ration cards, voters' list or census are concerned, it has been contended that such work is below their dignity and/or at any rate, not in keeping with their educational qualifications and status in Society. Failure to compensate for such work is unconstitutional. It is also argued that except for teachers as a class, no other service personnel is required to perform these additional duties and this amounts to discrimination. It is also contended that the members of the Union have no choice but to perform these additional functions in view of disciplinary threat. It has been further argued that the vacations and/or holidays which the teachers are entitled to are consumed in such work and not compensated for by the authority which causes the teachers' hardship.

7. In the return, submitted on behalf of the respondents, the averments of the petition are denied and it has been pointed out that the work taken from the teachers is services for public purposes within the meaning of Article 23(2) of the [Constitution of India](#), It has also been stated that the teachers are paid travelling and dearness allowance when such work is got done through them. The discrimination, as averred, has been denied. It has also been stated that the

teachers who are made to work for public purposes during holidays and vacations, are granted earned leave as per the rules applicable.

8. The points raised in the petition and the arguments advanced thereon apparently are thought provoking, but in the present democratic set up, is wholly an antithesis. It is indeed unfortunate to note that the teachers who have, from the time immemorial, been regarded as intellectuals and builders of society in general and the nation in particular, should have complained of these works which are of public purpose. It is to be realised that the very conception of a just Government, as in our country, and its duty towards its citizens includes the reciprocal obligation of each and every individual to voluntarily come forward and render such service as is required by the State to case of need and, if necessary, the State must have right to compel performance, provided, of course, the services required to be rendered fall within the meaning of 'public purpose' and unless each and every citizen imbibes within himself a spirit of sacrifice, social Justice would remain a far cry. This right of the State is to be found in Article 23 of the [Constitution of India](#), which is reproduced below :

'23 (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.'

It will be seen that the provisions contained in sub-clause (2) are exception to Sub-clause (1) as Clause (2) opens with a non obstante clause. In addition to this, reference may also be made, at this stage, to the provisions of Article 51A of the [Constitution of India](#) which prescribe for the fundamental duties of every citizen. Clause (d) of Article 51P, which is as under:

'(d) to defend the country and render national service when called upon to do so'.

prescribes one of the duties, which is, to render 'national service'. In our opinion, the terms 'national service' and 'public' purpose' are synonymous. The term 'public purpose' though of common occurrence, has not been defined. It includes an object or aim in which the general interest of the community as opposed to particular interest of individual is directly and vitally concerned. (See *State of Bihar v. Kameshwar Singh*, AIR 1952 SC 252.) The same meaning can be attributed to the term 'national service'. Census, election, drought famine epidemic, family planning earthquakes, maintenance of peace and harmony, law and order, external aggression, internal disturbance, defence etc. are but some of the examples concerning general interest of the community. There may be other aims and objects in which general interests of the community get involved under certain circumstances. Preparation of ration cards is one of them. We have been referred to the documents annexed with the petition but from none of the documents, it can be inferred that female teachers have been asked to bring males for sterilisation. The instructions contained in Annexes. 'A, and 'B' with the petition are general in nature and in the absence of any specific instances, we are not prepared to accept the contention of the learned counsel for the petitioners that female teachers were asked to motivate males for sterilisation. This argument is accordingly rejected. We would, however, like to observe that keeping in view the custom, culture and tradition of Indian womanhood, the authorities would refrain from requiring any female to render such services, even though for public purpose, which may encroach upon their morality and modesty. Morality and modesty are fluid in concept and their contents depend upon time place and stage of civilisation, (see *Brij Gopal v. State of M P.*, 1979 MPLJ 695 : (AIR 1979 Madh pra 173)) Therefore, in order to determine whether a particular work though for public purposes should be asked to be rendered by females, the authorities should have due regard to the prevalent custom culture and tradition so as not to hurt the feelings of fair sex.

9. The contention as regards discriminatory treatment is also without any foundation. No material has been placed except a bald statement from which it can be held that no other Government servant except the teachers are swung into action to render these services. We have perused the Orders annexed as Annexes. F and G with the petition. While the contents of the Annex. F refers to the officers and employees of the State Government in general, that of Annex. G confines to

the teachers and employees of educational organisations in particular. We do not find any discrimination in these two orders. The order contained in Annex. G has been separately issued in view of the impending 'summer vacations' which is not available to the other employees of the State Government. These documents also show that the work is not limited to the teachers as a class only. The argument, based on discrimination, being without any substance, deserves rejection.

10. Lastly, the validity of Fundamental Rule 11 remains to be considered. It has been challenged on the ground that it is contrary to the service rules made under Article 309 of the [Constitution of India](#) and further is violative of fundamental rights. The argument is that Begar having been abolished, no additional work can be taken without adequate compensation. It has been further stated that the said Fundamental Rule 11 being pre-constitutional cannot be made part of the service conditions of the teachers,

11. The Fundamental Rules, to regulate the conditions of service of civil servants, were made by the Secretary of State-in-Council in exercise of the powers conferred upon him by Section 96B of the Government of India. Act, as amended in 1919. These rules were continued when the Government of India Act. 1935 was brought in force, by virtue of Section 276. On the 26th January 1950, the Fundamental Rules, being the law in force, were kept alive under Article 313 of the [Constitution of India](#). We have earlier quoted the provisions of Fundamental Rule 11. Its validity is questioned before us on the ground that Begar having been abolished, additional work without compensation is against the spirit of Article 23(1) of the [Constitution of India](#). The learned counsel for the petitioners tried to draw support from People's Union for Democratic Rights v. Union of India (supra) and Sanjit Roy v. State of Rajasthan (supra). In our opinion, both these decisions are not apt for the propositions laid before us for determination. We have already seen that the provisions of Sub-clause (2) at Article 23 of the Constitution are exception to the Sub-clause (1) of Article 23 of the Constitution and, therefore, nothing contained in Sub-clause (1) would prevent the State from imposing compulsory service for public purpose. Consequently, the services rendered by the teachers cannot be termed as Begar. In Acharaj Singh v. State of Bihar, AIR 1967 Pat 114 it has been held that to compel a cultivator to bring foodgrains to the

Government godown without remuneration for such labour, in a scheme for procurement of foodgrains as an essential commodity for the community, there shall be no contravention of Article 23 of the Constitution because the compulsory service is for 'public purpose'. It is not necessary for us to emphasize that the services required to be rendered by the teachers towards census election, preparation of ration cards or family planning are 'for public purpose and, therefore, even if no compensation is paid, this does not contravene Article 23 of the constitution. The challenge to Fundamental Rule is also equally without any force. Fundamental Rule 11 is not applicable for 'additional work' but provides for 'employed in any manner'. On plain construction of this provision, it would be seen that the words 'employed in any manner' do not mean 'additional work' but, in our opinion, in its context would mean 'employed in no matter what manner' required by the authority. Such employment necessarily is 'in lieu of' and not in addition to the work for which 'a person has been employed. Under these circumstances, the said rule prohibits claim for additional remuneration. In view of this, in our opinion, the provisions of the Fundamental Rule 11 do not at all either contravene the provisions of Article 23 or any of the Fundamental Rights of the teachers guaranteed by the Constitution. The said rule also is not violative of any of the service rules framed under Article 309 of the [Constitution of India](#). For these reasons, the challenge to the constitutional validity of Fundamental Rule 11 must also fail.

12. The petition is without any substance and is accordingly dismissed but without any order as to costs. The security amount if any be refunded to the petitioners.

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