

ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001.

No.464/INST/2009/EPS

Dated: 18th February,

2011

To,

The Chief Electoral Officers of
All States and Union Territories.

Subject: Requisition of Staff for election purpose – regarding.

Sir/Madam,

I am directed to refer to Section 159 of the Representation of the People Act, 1951, which deals with requisitioning of staff for election work. It has been provided that the authorities mentioned in sub-section(2) of the said Section 159 shall make available to the Returning Officers such staff as may be necessary for the performance of any duty in connection with an election, on request made by the Chief Electoral Officer of the State.

2. The following authorities have been so specified under the said sub-section(2) of the section 159:

- (i) every local authority;
- (ii) every university established or incorporated by or under a Central, Provincial or State Act;
- (iii) a Government company as defined in section 617 of the Companies Act, 1956;
- (iv) any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act, or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government.

3. Section 26 of the Representation of People Act, 1951 empowers the District Election Officers to appoint Presiding Officers and Polling Officers for polling stations falling in his district. Further, under section 20A of the Representation of the People Act, 1951, the District Election Officer is required to coordinate and supervise all work in the District in connection with conduct of elections. Therefore, by convention and for convenience, the

District Election Officers have been requisitioning staff for conduct of election under Section 159 of the R. P. Act, 1951.

4. During the general election to the Legislative Assembly of Maharashtra, in 2009, the orders of requisitioning of staff issued by the DEOs and Collectors. of Thane district and Mumbai sub-urban district were quashed by the Hon'ble Bombay High Court in Writ Petition Nos. 8052 of 2009, No. 8039 of 2009, No. 8089 of 2009, No. 8111 of 2009, on the ground that the action on the part of the DEOs in issuing of requisition orders by invoking sections 26 of R. P. Act, 1951 and 13AA of the R.P. Act, 1950, without giving due regard to the provisions of Section 159 of the R.P. Act, 1951 were improper. The Hon'ble High Court held that the power under Section 159 is of the Chief Electoral Officer, and the CEO should requisition the staff keeping in mind the guidelines issued by the Commission. The High Court has also made an observation that while requisitioning staff, all the organizations should be considered so that some institutions are not picked up selectively ignoring the fact that deployment of large number of staff from a few institutions would be likely to result in hardships in the business of such institutions.

5. The Hon'ble High Court further observed that the Chief Electoral Officer should issue legal and valid requisition orders under Section 159 of the R. P. Act, 1951, for requisitioning of staff from the organizations covered by section 159 of the R. P. Act, 1951 in accordance with the law.

A copy of the common order dated 25th September, 2009 passed by Hon'ble High Court of Bombay in W. P. Nos. 8052, 8039, 8089 and 8111 of 2009 is enclosed herewith.

6. In view of the above, it may be ensured that the orders for requisitioning

staff for election work are issued by the Chief Electoral Officer under section 159(1) of R.P. Act, 1951, requesting the authorities mentioned in sub-section(2) of section 159 of Representation of the People Act,1951 to make available to Returning Officer such staff as may be necessary for performance of duties in connection with elections. Appointments of staff so seconded to Returning Officer should , however, be made by the District Election Officer under Section 26 of the Representation of the People Act, 1951.

7. The following guidelines should be kept in mind:

- (a) Based on the availability of staff in the institutions covered under Section 159(2), and the requirement of staff, the staff may be requisitioned from such institutions.
- (b) The Commission has exempted certain offices/institutions for the purposes of election duty in view of the essential nature of duties/services discharged by the institutions. This should be kept in mind.
- (c) Employees of banks, LIC may be drafted on election duty to the minimum extent possible, only in a constituency where sufficient numbers of govt. employees are not available or in emergent circumstances such as strike etc. by the Govt. employees. Care should be taken to ensure that normal functioning of banks, LIC are not interrupted. Care should further be taken to ensure that minimum numbers of employees of such institutions is requisitioned so that the business of these institutions is not hampered.

8. It is reiterated that while requisitioning of the staff for conduct of future elections, their rank, salary etc. should be kept in mind while making appointment and assigning duties to them.

9. The instructions in the earlier letter No. 464/INST/2009/EPS, dated 30th December, 2009, shall be treated as superseded by the instructions in the present letter.

10. These instructions may be brought to the notice of all concerned.

Yours faithfully,

SUMIT MUKHERJEE
(UNDER SECRETARY)