

(2007) 11 BOM CK 0046
In the Bombay High Court
Case No : Election Petition No. 10 of 2005

Dr. Nayna (Patil)

APPELLANT

Vs

Dr. Vimal Mundada and Shri D.N. Wanawale, Returning
Officer

RESPONDENT

Date of Decision : 02-11-2007

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Constitution of India, 1950 — Article 191, 191(1), 226, 309
Representation of the People Act, 1951 — Section 33(3), 83, 9A

Citation : (2008) 1 BomCR 256 : (2008) 3 MhLj 156

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : Shrihari Ane instructed by P.R. Katneshwarkar and A.M. Karad, for the Appellant; S.V. Kanetkar, instructed by S.S. Rathi, for the respondent No. 1, S.B. Parnere, holding for S.T. Shelke, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Kingaonkar, J.—By this petition, petitioner challenges election of Respondent No. 1 as Member of Legislative Assembly, State of Maharashtra, from 201 Kaij Constituency, on ground of illegal and improper rejection of her nomination by Respondent No. 2 and seeks declaration that election of the Respondent No. 1 as Member of Legislative Assembly, declared on 16th September, 2004, is null and void, and liable to be set aside.

2. The petitioner was appointed as Medical Officer Class-II at S.R.T.R. Medical College, Ambajogai, as per appointment letter dated 04-11-1991. Initially, her appointment was on probation and temporary. She was appointed on permanent basis through process of Maharashtra Public Service Commission in 1995. In or about September, 2003, she was transferred to Rural Hospital, Parali (Vaijanath). She was working as such when elections for Member of Legislative Assembly from 201 Kaij Constituency were declared. She hails from and is a voter from Kaij Constituency. She desired to enter active politics. So, she decided to resign

the post of Medical Officer Class-II. She tendered her resignation letter on 13-09-2004 addressed to the Secretary, Public Health Department, Mantralaya, Mumbai. The resignation was to be routed through proper channel, and, therefore, she gave the letter of resignation to the Medical Superintendent, Rural Hospital, Parali (Vaijanath). He received the letter of resignation on 14-09-2004.

3. The petitioner alleges that she desired to immediately lay down the office, and hence, deposited one months salary amount on 14-09-2004. The amount of one months salary in lieu of one months prior notice was deposited in accordance with the condition enumerated in Clause (3) (C) of the appointment letter. She asserts that the amount was so deposited as she did not want to await for one month and desired to quit the office immediately on submission of the resignation letter. She asserts that the Medical Superintendent issued "No Dues-cum-No Enquiry Certificate" in her favour and recommended that her letter of resignation may be accepted. The Medical Superintendent forwarded her resignation letter in requisite proforma to the competent authority. The last date for filing nomination papers for 201 Kaij Constituency was 22nd September, 2004 and the scrutiny of the nomination papers was fixed on next day i.e. 23rd September, 2004. The petitioner submitted her nomination paper as a candidate of Bhartiya Janata Party (BJP). The Respondent No. 1 was fielded as a candidate by the Congress Party. The Respondent No. 1 alongwith some other six candidates had filed nomination papers from the said Constituency. An objection was raised by the Respondent No. 1 to nomination of the petitioner on the ground that she was disqualified to contest the election in view of Article 191(1)(a) of the Constitution of India. Tenor of the objection was that the petitioner was not validly relieved from the post because her resignation was not accepted at the relevant time. It was contended by the Respondent No. 1 that the petitioner was holder of office of profit being a Government servant as on the date of the scrutiny of the nomination papers. Therefore, she was disqualified for being elected as Member of the Legislative Assembly. The Respondent No. 1 contended that as per the norms laid down in Government Resolution dated 2nd December, 1997, the employment of the petitioner would stand continued until the resignation was accepted. The petitioner filed her representation to the Objection Petition on the same day. The Respondent No.2, however, rejected the nomination of the petitioner, holding that she was disqualified as on the date of scrutiny of the nomination papers. The Respondent No. 2 rendered order dated 23rd September, 2004 (Exh-G) accordingly, holding that the petitioner was disqualified under Article 191(1)(a) of the Constitution of India and Section 33(3) of the Representation of the Peoples Act, 1951, being holder of office of profit at the relevant time. Thus, she was set out of the fray in the process of election to the said Constituency. The respondent No. 1 was declared as returned candidate on 16-10-2004 as a result of said election.

4. The petitioners case is that rejection of her nomination paper was improper and illegal. She was duly qualified to contest the said election in as much as the resignation was tendered much prior to scrutiny of the nomination papers and

because she deposited the entire amount of one months salary, there remained nothing to be done on her part. She contended that giving of resignation was unilateral act and it was not necessary for the Respondent No. 2 to consider whether the said resignation was accepted or not at the time of scrutiny of the nomination papers. All the necessary documents including copy of the resignation letter, receipt of payment of one months salary, forwarding letter of the Medical Superintendent, Rural Hospital, etc., were produced by her before the Respondent No. 2, which were not properly considered. The Respondent No. 2 malafidely rejected her nomination paper under influence of and in order to oblige the Respondent No. 1. The Respondent No. 1 calculatedly ousted her (petitioner) from the contest though there was nothing improper in her nomination form. Hence, the Petition.

5. Both Respondents resisted the petition. They denied all the material averments made in the Petition as regards validity of the resignation letter. They contended that the petitioner was in Government service as on the date of scrutiny of the nomination papers. They further asserted that unless the resignation was duly accepted by the competent authority, it could not be legally effective. And hence, the petitioner was holder of office of profit as on the date of scrutiny of the nomination papers. They denied that the petitioner deposited the amount of one months salary on 14-09-2004. They alleged that the resignation is a bilateral act in accordance with the Government Resolution dated 02-12-1997 and unless communication of acceptance was received by the petitioner, the resignation could not be deemed as accepted, and, therefore, she was not eligible to file her nomination paper for the said election. They supported the impugned order rendered by the Respondent No. 2. They denied any malafides in the context of rejection of the petitioners nomination papers. They sought dismissal of the petition.

6. My learned Predecessor (Bagga, J.), by order dated 2nd September, 2005, struck following issues.

[i] Does the petitioner prove that she ceased to be employee of Government with effect from 13.9.2004 ?

[ii] Does the petitioner further prove that she was not holding any office of profit at the relevant time ?

[iii] Does the petitioner prove that her nomination paper was wrongly rejected by Returning Officer ?

[iv] Whether petition is filed in limitation ?

[v] What Relief, if any, to which the petitioner is entitled to ?

7. The parties went to trial over the above issues. They adduced oral and documentary evidence in support of the rival contentions. The petitioner entered the witness box and also examined PW2 Dr. Raghuvir Bhosale in support of her case. On behalf of the Respondents, DW1 Prakash Pradhan, Deputy Secretary,

Public Health Department, testified as regards the procedure for valid tender and acceptance of the resignation.

8. Mr. Shrihari Aney, learned Senior Counsel, appearing on behalf of the petitioner, would submit that the issue as to whether the petitioner ceases to be an employee of the State Government is distinct from the issue as to whether she was holder of office of profit as on the date of scrutiny of the nomination papers. He contended that even if the petitioner is not relieved from the ties of employment, yet she could not be regarded as holder of office of profit as on the date of scrutiny of the nomination papers. He contended that once the petitioner tendered the resignation letter on 13-09-2004, deposited the amount of one months salary as per condition of the service, and was issued No Objection Certificate as well as No Dues Certificate by the Medical Superintendent, nothing had remained to be complied with by her. He contended that acceptance of the resignation letter by the Competent Authority/employer remained only a formality and ministerial act. He argued that the petitioner could not have derived any profit from the office after 13-09-2004 and as such, was not disqualified from contesting the election. He would further submit that in absence of any particular rule in the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, which would require acceptance of the resignation by the Competent Authority, the resignation ought to be treated as unilateral act in view of the conditions enumerated in the appointment letter (Exh-A). He would submit that the clarificatory Government Resolution dated 2-12-1997 and procedure envisaged therein is outside realm of the conditions of service. He would submit that the petitioner was no more under control of the superior officer, namely, the Medical Superintendent and had given charge of the post. She did not turn up to attend the office after 13-09-2004. Nobody called her back to the duty thereafter. He would submit that when the resignation letter was later on accepted, with retrospective effect, it ought to have been considered that there was hardly any indication of the petitioner being holder of office of profit as on the date of the scrutiny of the nomination papers.

9. Mr. Aney strenuously argued that Article 191(1)(a) of the Constitution of India does not explain the expression "office of profit", and therefore, it cannot be read in terms of the Government Resolution dated 02-12-1997. He would submit that in absence of a particular service condition under the Rules framed under Article 309 of the Constitution, the resignation would become effective as soon as it is tendered and on making of compliance required to be made by the employee. He would submit, therefore, that the petitioner was no more holder of office of profit and particularly when whatever profit which she could have derived by way of salary for that period was remitted by her vide the deposited amount. It is contended that there was no possible conflict in nature of duty of the petitioner and her invisible attachment to the office as Medical Officer when the nomination papers were scrutinized on 22-09-2004. In other words, she had relinquished the post on her part without any expectation of profit which could be the outcome of holding the office. It is argued, therefore, that she ceased to belong to the office

of profit. It is argued that there was no impediment in legal terms and she should have been allowed to contest the election. Mr. Aney seeks to rely on various authorities to which I shall refer in due course of discussion.

10. Mr. S.V. Kanetkar, learned Counsel appearing on behalf of respondent No. 1, argued that there is variance between the pleadings of the petitioner and the evidence as well as the oral submissions. He argued that the pleadings of the petitioner do not show that she was not required to comply with the conditions enumerated in the Government Resolution dated 02-12-1997. He would point out that she was well aware of the terms of the said Government Resolution. He would submit that the amount was not deposited on 14-09-2004 as contended by the petitioner, but it was later on deposited. He contended that the version of PW2 Dr. Raghuvir is tainted with inaccuracies and inconsistencies. He would submit that when no urgency was expressed at the time of giving resignation letter, then it was logical to believe that the petitioner anticipated waiting period of atleast one month. Mr. Kanetkar supported the impugned order rendered by the respondent No. 2.

11. Core issue is whether under terms of the service contract, the petitioner can claim unilateral relinquishment of the office held by her - She was admittedly a permanent Class-II Government Officer. In case of resignation, there cannot be doubt that the employee may claim liberty from the ties attached to the post, while he/she is in the employment of the Government, on tendering the resignation if the service conditions allow unilateral severance. The acceptance of the resignation letter is subject matter of the service conditions which are applicable to a Government employee. If there is no service condition which makes the act of resignation bilateral, then, the employee can walk away from the office on his/her own. However, the general rule is that the resignation is a bilateral act and cannot be treated as a completed process unless it is accepted by the Competent Authority.

12. To clear the deck, it may be mentioned that the petitioner challenged rejection of her nomination paper by filing Writ Petition (Writ Petition No. 5983/2004). She urged to allow her to contest the election and stay the process. This Court held that it would not be proper to interfere in the process of election in the exercise of jurisdiction under Article 226 of the Constitution of India. The writ petition was dismissed in limine on 28-09-2004. The voting took place on 13-10-2004. The results of the election were declared on 16-10-2004. The Respondent No. 1 was declared as elected candidate as a result thereof. Though the petitioner submitted that the Respondent No. 1 is otherwise disqualified to contest the election for the reason that she is Proprietor of a Petrol Pump called "Akshay Services", which is outcome of an agreement with the Government Corporation and hence, she is disqualified in view of Section 9A of the Representation of People Act, 1951, yet this kind of objection was not pressed into service. Nor any issue was framed in this behalf. The petitioner would further submit that the resignation could be deemed as accepted within period of one

month from the date of her resignation i.e. on 13-10-2004 which was scheduled as date for voting and by that time, she could be regarded as completely relieved from the office. Therefore, the rejection of her nomination paper must be regarded as invalid.

13. The averments as regards malafide intention attributed to the Respondent No. 2 are vague. So also, the averment that the Respondent No. 1 deliberately used her power, pressure and undue influence to ensure that the resignation of the petitioner was not accepted, is also vague. The petitioners allegation that rejection of her nomination paper by the Respondent No. 2 is colourable exercise of power under influence of the Respondent No. 1 and to oblige the latter is not pressed in to service. Nor there is any iota of evidence to corroborate such vague averments made in the petition.

14. It is in the wake of above background that the evidence of the parties may be scrutinized. The version of PW1 Dr. Naina (petitioner) reveals that she tendered her resignation on 13th September, 2004 in accordance with terms of her appointment. She corroborates the resignation letter (Exh-B). She narrated the steps taken by her regarding payment of one months salary. She states that the Medical Superintendent issued "No Dues and No Objection Certificate" in her favour. She reiterated averments made in the petition. Her evidence purports to show that by letter dated 10-01-2005, she was informed that her resignation was accepted by the Government w.e.f. 30th September, 2004. Her cross-examination reveals that she was allotted ticket by B.J.P. on 22-09-2004 i.e. on the day when she filled in the nomination papers. She further admits that she tendered resignation letter dated 13th September, 2004 on plain paper and not in the format as required under the Government Resolution dated 02-12-1997. She admits, unequivocally, that she herself did not submit the resignation in the format to the Medical Superintendent and it was filled in by the Medical Superintendent while forwarding the same. Her resignation letter reveals that she urged that her resignation be accepted. The request to accept the resignation is made in her own hand. The resignation letter (Exh-B) does not indicate the date from which she wanted to be relieved. The resignation letter also does not show that she had deposited the one months salary in lieu of notice of one month. Though she states that she paid amount of one months salary to the Cashier on 14-09-2004, yet the said amount was credited to the Government Treasury Account on 20th September, 2004. The receipt for Rs. 10,200/-is, however, dated 14-09-2004. The endorsement of Medical Superintendent on resignation letter reveals that it was received by him on 16-09-2004.

15. The version of PW2 Dr. Raghuvir reveals that he was working as Medical Superintendent of Rural Hospital, Parali (Vajjnath) in September, 2004. He received the resignation letter dated 13-09-2004 (Exh-31). He further submits that the letter dated 14-09-2004 was sent by him to the Deputy Director (Health Services) informing the said Authority regarding resignation of the petitioner. The

copy of forwarding letter (Exh-32) is corroborated by him. He corroborates the resignation letter in the prescribed format (Exh-34) which he himself filled in. His version also shows that the petitioner deposited salary of one month on 14-09-2004. He received letter dated 25-12-2004 whereby it was communicated that the resignation of the petitioner was accepted (Exh-36). His version reveals that the resignation letter indicated that the inward entry bore No. 720 dated 14-09-2004. There appears such entry in relation to date 26-08-2004. It appears that the Entry No. 729 is interpolated in the inward register. The amount of Rs. 10,200/- was credited in the Government Account on 20th September, 2004. It appears that the evidence is somewhat inconsistent in so far as date of the deposit in respect of the amount of one months salary is concerned. At the most it would affect the deemed date, if that was so contemplated as such, of acceptance of the resignation letter. The fact remains, however, that prior to 22-09-2004, the petitioner gave resignation letter and deposited the amount of one months salary. It is admitted by PW2 Dr. Raghuvir that he was not authorized to accept the resignation letter and could not have relieved the Medical Officer on his own.

16. The testimony of DW1 Prakash reveals that the letter dated 23-09-2004 was written by the Deputy Secretary to the Director General of Health Services, Mumbai. The letter dated 23-09-2004 (Exh-43) reveals that the resignation of the petitioner was forwarded to the Director General of Health Services and the said Authority received the same on 08-10-2004. It appears that the communication of acceptance of the resignation was as per letter dated 15-10-2004 (Exh-35). It is stated by DW1 Prakash that the procedure for submission of resignation and acceptance thereof is laid down in Government Resolution dated 02-12-1997, a copy of which is filed on record. It is pertinent to note that no cross-examination was directed against DW1 Prakash. Hence, there is no reason to dislodge his version in the context of the procedure to be followed for tendering valid resignation.

17. Mr. Aney, learned Senior Counsel seeks to rely on Sitaram Jivyaabhai Gavali Vs. Ramjibhai Potiyabhai Mahala and Others, . The Apex Court held, in the given case, that petitioner Sitaram was relieved from the office of profit when his resignation letter was tendered, even without the need for waiting for a month, as required under Rule 5 (1) (a) of CCS (Temporary Service) Rules. The Apex Court held that the resignation of Sitaram Gavali had become effective atleast on the day on which the records were handed over and became effective and he had ceased to hold the office before the date of scrutiny. The fact situation in case of Sitaram is altogether different from that of the case in hand. For, Sitaram Gavali was a temporary employee. He was appointed under the provisions contained in the Central Civil Services (Temporary Service) Rules. The letter of resignation had been submitted in pursuance of Clause (6) of the appointment order. There is no difficulty in reaching conclusion that a temporary Junior Clerk like Sitaram Gavali can walk away from the office on giving resignation letter and handing over of the charge. The appointment letter of Sitaram Gavali revealed that the

appointment was purely on temporary basis. The Clause (6) of the appointment letter disclosed that before resigning the post, he would be required to give one months notice to the Administration, failing which he shall have to remit one months notice pay before he could be relieved from the service. It is important to note that even then, his resignation was accepted by the Competent Authority and thereafter he was treated as relieved from the office. The Apex Court observed:

It is well recognized that a new service condition may be brought into effect by an executive order and such condition would remain in force as long as it is not repealed either expressly or by necessary implication by another executive order or a rule made under the proviso of Article 309 of the Constitution of India or by a statute....

...The only question that remains to be considered is whether the appellant had been relieved from his service by the Administration. Condition No. 6 provided that before resigning the post, he shall have to give one months notice to the Administration failing which he shall have to remit one months period pay before he could be relieved from service. No rule or executive order prescribing the method or manner in which a temporary government servant of the rank of an Investigator could be relieved from service under condition no. (6) of the letter of appointment is brought to our notice. Nor it is shown by adducing any evidence as to what practice had come in vogue as regards relieving such a person.

Herein, there is evidence to show that a Government employee would be relieved only on communication of acceptance of his resignation.

18. Reliance is also placed on *Moti Ram Vs. Param Dev and another*, . It was a case in which Chairman of H.P. Khadi and Village Industries Board tendered his resignation from the office as Chairman. He was Chairman as well as Member of the Khadi and Village Industries Board. It was held that his resignation from the office of Chairman took immediate effect and hence he was not holding the office of the Chairman as on the date of scrutiny of the nomination papers. His resignation from the office as Member, however, took effect from February 12 after the stipulated period. This decision is rendered in view of the provisions of the Special Enactment, namely, the H.P. Khadi and Village Industries Board Act, 1966. Secondly, as per the provisions of the said Act, the Chairman was entitled to resign in praesenti without waiting for acceptance thereof. The resignation only of Member required acceptance. The fact situation, with due respect, in the case of *Motiram* stands on different footing. This can be gathered from the observations in para 16 of the said judgement. The observations may be usefully quoted as follows.

16. As pointed out by this Court, resignation means the spontaneous relinquishment of ones own right and in relation to an office. It connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there

must be intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. [See : Union of India v. Gopal Chandra Misra]. If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it.

19. In case of Motiram v. Param Dev (supra), the Apex Court made it amply clear that a contract of employment would stand on different footing wherein the act of relinquishment is of a bilateral character and resignation of an employee is effective only on acceptance of the same by the employer. The Apex Court discussed this aspect with reference to Raj Kumar Vs. Union of India (UOI), , wherein it has been held:

...But when a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter.

So also, in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , the Apex Court observed:

...A resignation by an employee would, however, normally require to be accepted by the employer in order to be effective. It can be that in certain circumstances an employer would be justified in refusing to accept the employees resignation as, for instance, when an employee wants to leave in the middle of a work which is urgent or important and for the completion of which his presence and participation are necessary. An employer can also refuse to accept the

resignation when there is a disciplinary inquiry pending against the employee. In such case, to permit an employee to resign would be to allow him to go away from the service and escape the consequences of an adverse finding against him in such an inquiry. There can also be other grounds on which an employer would be justified in not accepting the resignation of an employee.

20. In *Divya Prakash Vs. Kultar Chand Rana and Another*, , the Apex Court held that in absence of any profit accruing to the first respondent (Kultar Chand) as a result of the holding of the office of Chairman it could not be said that he was holding an office of profit. That was a case where the Chairman was appointed to the post on honorary basis. Reliance is also placed on *Anil Baluni Vs. Surendra Singh Negi*, . The issues involved in the Election Petition of given case were altogether different from those which are involved in the present case. So also, reference was made to the cases of *Shibu Soren Vs. Dayanand Sahay and Others*, and *Jaya Bachchan Vs. Union of India (UOI) and Others*, . Both these authorities are of no much help to the case of the petitioner. The nature of the office held outside the realm of Government employment is required to be determined by applying well settled tests, before it can be said that such an office is office of profit within the meaning of Article 191(1)(a) of the Constitution of India. For determining the question whether a particular office is an office under the government or not, the Apex Court in *Shivamurthy Swami v. Agadi Sanganna Andnappa*, (1971) 3 SCC 870 , laid down following tests.

- (i) Whether the government makes the appointment;
- (ii) Whether the government has the right to remove or dismiss the holder;
- (iii) Whether the government pays remuneration;
- (iv) What the functions of the holder are and does he perform them for government; and
- (v) Does the government exercise any control over the performance of these functions.

These are the tests which are to be applied while determining whether a person is holding office of profit under the Government of India or the State, or not, having regard to circumstances of each case. There cannot be any straight jacket formula and terms of each office must be determined in view of the term of appointment, availability of the profit attached to the office and nature of the employment. In some cases, like one of "*Jaya Bachchan*" (supra), there may not be remuneration in terms of money paid to the Chairman of the Board, but there may be perquisites, there may be facilities like availability of vehicle, telephone, etc., which holder of such office may be permitted to enjoy during the tenure. The Government employee, in any case, cannot walk out of the office on his own without being allowed to do so under specific terms of conditions of the employment. A temporary Government servant may do so within a particular period of the service. For, the service conditions may allow the employer to get

rid of such an employee during the period of probation or that the probationer may be allowed to walk away from the office if he is unwilling to continue the employment. However, in case of a permanent employee, the conditions attached to the office do not permit, ordinarily, to lay down the office without following the procedural aspects like the acceptance of resignation. The resignation to become effective generally is a bilateral act.

21. The learned Senior Counsel referred to certain observations in *Raj Kumar Vs. Union of India (UOI)*, . The Apex Court held that there was no right available to withdraw the offer of resignation after it was accepted. In that case, the petitioner was a Member of Indian Administrative Services and had asked the government to relieve him from service. The Government accepted it. Before communication of the order of acceptance in respect of his resignation, he withdrew his offer of resignation. The Apex Court noticed that there was no rule framed under Article 309 of the Constitution about when the resignation would become effective, and therefore, once it was accepted, then it immediately became effective on the date on which it was accepted by the Government of India. Thus, even in case of *Raj Kumar*, the acceptance of resignation letter was regarded as precondition to treat the resignation as effective.

22. Mr. Aney would submit that the appointment letter (Exh-A) does not prescribe condition that resignation would become effective only after its acceptance. The Government Resolution dated 2.12.1997 can not be therefore condition of employment. So far as the question whether Government Resolution dated 02-12-1997 (Exh-H) is a part of the service condition or not is concerned, it may be stated that the petitioner referred to the said Government Resolution in her pleadings. She asserted that she complied with the terms of said Government Resolution at the time of tendering the resignation letter. She cannot be allowed to turn volte-face to say that she is immune from the conditions enumerated in the said Government Resolution. It is well settled that when there are no specific service conditions enumerated under the rules, then the vacuum can be filled in by executive instructions. Besides, learned Counsel for the respondent No. 1 seeks to rely on "*Chandrakant Sakharam Karkhanis and Ors. v. State of Maharashtra and Ors.*" 1976 Mh.L.J. 755 wherein a Full Bench of this Court clarified the legal position in the context of legal import of the Circulars, Orders or Resolutions whereby rules or principles of general application are laid down. The Full Bench judgement of this Court would make the legal position amply clear. The Full Bench held:

32. Circulars, Orders or Resolutions or parts thereof laying down the rules or principles of general application, which have to be observed in the recruitment or fixation of seniority of Government servants generally or a particular class of them, and which have been duly authenticated by a signature under the endorsement "By order and in the name of the Governor of Maharashtra" and intended to be applicable straightway can amount to rules framed in exercise of the powers conferred under the proviso to Article 309 of the Constitution,

although the said Circulars, Orders or Resolutions do not expressly state that the same are made or issued in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India and are not published in the Government Gazette.

23. The legal position which may be culled out is that though the Government Resolution dated 02-12-1997 was not made a part of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, yet it will have to be treated as part of the service condition, whereby it is necessary for an employee to continue in the employment until his/her resignation letter is duly accepted by the Competent Authority. The specific condition enumerated in Clause (9) of the said Government Resolution is to the effect that the employee ought to be informed that he will stand relieved only when the resignation is accepted and such decision is rendered by the Government, and till then he would continue in the Government service of which he shall take note. The petitioner was, therefore, well aware that without communication of acceptance of the resignation, there could not be discontinuation in her employment. The responsible officer, particularly like the Medical Officer, cannot be allowed to walk away from the office by merely giving a letter of resignation. As stated before, the letter itself does not show as to when it was intended to become effective. The petitioners request for immediate acceptance could have been communicated by her directly to the concerned Competent Authority by reaching the letter of resignation without delay. She could have requested to relieve her prior to the date of scrutiny of the nomination papers. No such effort was made by her.

24. In Jaipal Singh Vs. Smt. Sumitra Mahajan and Another, , it was held that rejection of the Election Petition was proper. The petitioner, it was held, ought to have stated that on 13-03-2004, he had requested for waiver of the notice period; that the appointing authority had received the notice on the specified date and that his request for waiver stood granted on the date of scrutiny and he ceased to be a Government servant. These material facts were not pleaded by the petitioner and hence, it was held that the petition was liable to be rejected in view of Section 83 of the Representation of the People Act (43 of 1951). The Apex Court proceeded to observe thus:

It is incorrect to say that the acceptance by the appointing authority of the application seeking permission to retire was not required as there was no difference between voluntary retirement and resignation. In service jurisprudence there is a difference between voluntary retirement and resignation as they convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service and though both involve voluntary acts, they operate differently. One of the basic distinction between the two is that in the case of resignation, it can be tendered at any time but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. In the case of resignation, a prior

permission is not mandatory while in the case of voluntary retirement, permission of concerned employer is requisite condition.

25. In "Reserve Bank of India v. Cecil Dennis Solomon" AIR 2004 SCW 1402 the Apex Court categorically observed that resignation and voluntary retirement involve voluntary acts on the part of the employee to leave service. The Apex Court held:

Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provision to the contrary.

The relevant observations in para 10 of the judgement in case of "Reserve Bank of India v. Cecil Dennis Solomon" (supra) would make it amply clear that the resignation cannot be treated as an unilateral act of the employee and would not become effective at his instance or as per his time-schedule unless there is a specific provision contrary to the general rule that it would become effective on acceptance by the competent authority.

26. In Raj Narain Vs. Indira Nehru Gandhi and Another, , it is laid down that the service of a Government servant normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority unless there is any law or statutory rule governing the conditions to the contrary.

27. The Government Resolution, referred to above, specifically provides procedure for acceptance of the resignation tendered by a Government employee. The resignation cannot be deemed to have been accepted only because the concerned immediate superior officer certified that there was no dues recoverable and there was no objection for acceptance of the resignation. The acceptance of the resignation is not a mere formality or ministerial act. It requires serious consideration. For example, if due to some reason or other, all Medical Officers in the State, together decide to tender resignations in protest of certain policies or on account of allurements of some other employment in private sector, the Government may have a right to reject the requests and to take suitable administrative actions if the employees act to the contrary of the service conditions. So, it cannot be said that merely because the petitioner did not report to the duty and had not obtained pecuniary benefits, she was no more in government employment with effect from 13th or 14th September, 2004. I am not impressed by the argument that her discontinuation of the employment and not being holder of office of profit are two distinct concepts. I am of the opinion that both these concepts are intertwined and are integral part of the service conditions, particularly, in the context of a Government employee like the petitioner. It is unfortunate that she could not contest the election and also is subsequently out of the Government service due to acceptance of her resignation. But that is not of any consequence in so far as merits of the Election Petition are concerned.

28. The resignation can not become effective in case of a Government employee

unless it is accepted by competent authority. The legal position is amply clear as regards effectiveness of resignation. A responsible Class-II Officer, particularly a Medical Officer like the petitioner can not walk away from the office on account of unilateral act of tendering the resignation. The resignation must be accepted by the competent authority before the notional relation of the employee with the office is deemed as terminated. There may be instances where even though there is no Departmental Enquiry, yet due to essential nature of services, the permission may be refused and the resignation may not be accepted. For example, the Nurses and Medical Officers in the employment of the Government are required to execute a Bond for stipulated period of two years to five years as per the policy of the Government, the concerned Department may not allow them to leave the office abruptly. Even otherwise, a responsible employee can not seek to set himself free from the responsibilities of his office merely by sending a letter evidencing his desire to have an exit from employment. Under the general law, a resignation will be effective only when it is accepted. That is based on sound public policy. To permit officials unilaterally to throw away the apparel of authority would generate hectic conditions in sensitive areas where certainty is rightly mandated. Along with powers and perks which he enjoys, a Medical Officer shares and shoulders duties and responsibilities. He/she can not adopt an attitude that his office is just another piece of abandoned luggage.

29. There is no warrant to assume that the petitioner could not be holder of office only because she was not entitled to claim salary for the relevant month. The "office" held by the petitioner can not be disassociated from the person. Her post could not be filled in by any new appointment until vacancy arose due to valid acceptance of her resignation letter and thereby causing termination of her service contract. The petitioner held substantive post. The post held by her is not independent of the person. The pay, perks, etc. are attached to the post of "Medical Officer" and, therefore, unless the post fell vacant due to termination of the service contract of the petitioner, no appointment could be made to said post. In other words, the petitioner was notional holder of the said post/office as on the date of scrutiny of the nomination papers. Whether she accepted any pecuniary advantage or not is immaterial. Therefore, the argument that she ceased to be holder of office of profit immediately from date of her giving of resignation will have to be rejected.

30. Considering totality of the circumstances and the foregoing discussion, I have no hesitation in holding that the rejection of the nomination papers of the petitioner is quite legal and valid. Hence I record negative findings on first three issues. The issue No. 4 does not survive for consideration and if survives, then my finding thereon is in the affirmative. The Election Petition must fail as the petitioner was holder of office of profit as on the date of scrutiny of the nomination papers. This answers the issue No. 5.

31. In the result, the Election Petition is dismissed, with no order as to costs.