
(2007) 06 MP CK 0009

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9569 of 2003 and O.A. No. 1246 of 1995

Pannalal Thakur

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 18-06-2007

Acts Referred:

Madhya Pradesh Panchayat Adhiniyam, 1962 — Section 338

Citation : (2008) 3 MPLJ 635

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Advocate : Umesh Trivedi, for the Appellant; T.S. Ruprah, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Gupta, J.

Heard.

The present petition is filed by the petitioner challenging the order dtd. 16-6-1994 (Annexure-A-3). By this order the petitioner has been communicated that the petitioner was absent from the duty for the period of about 19 years six months and the total tenure of the petitioner's employment was only for a period of only 11 months 14 days, therefore the petitioner shall deem to have relinquished the service in terms to M.P. F.R. 18, because of his continuous absence for a period of more than 5 years.

The facts leading to the present case are that the petitioner initially was engaged as an ad hoc LDC and subsequently by an order dtd 26th October, 1973 (Annexure-A-1) the petitioner was regularized. According to the petitioner he was sick for a period from 4-12-1974 till 8-3-1975 and thereafter -the petitioner submitted his joining report on 9-3-1975 in the office of the Block Development Officer, Mandla and thereafter the petitioner was not permitted to join his duties. The joining report was submitted by the petitioner on 9-3-1975, which is filed as

Annexure-A-2. It is the case of the petitioner that thereafter the petitioner was not permitted to join his duties though the petitioner continuously was submitting the representations and ultimately by an order Annexure-A-3 dtd 16-6-1994 the petitioner was intimated that since the petitioner has relinquished the services in terms to F.R. 18, therefore the petitioner is not permitted to join his duties and accordingly the case of the petitioner stands closed.

The respondents in the return have stated that the petitioner did not submit any joining report and was absent continuously from 4-12-1974. It is also the case of the respondents that during the period of absence the petitioner was also elected as Sarpanch of Gram Panchayat, Okharkhapri. The relevant certificate has also been filed by the petitioner along with the list of the additional documents. It appears that the Assistant Commissioner Tribal Development Department, Mandla sought some information from the office of the Deputy Director Panchayat and Social Services with regard to the status of the petitioner, whether the petitioner can contest the election while remaining in the government service? It has been intimated by the Deputy Director Panchayat Social Services, Mandla that in terms to section 338 of M.P. Panchayat Adhiniyam, 1962, the member of Panchayat shall be a public servant and a person who is into the employment of Government cannot hold the post of Sarpanch. It is also stated that the petitioner was also transferred vide order dtd 7-12-1974 to another school and was also relieved from primary school Thurki, where the petitioner was working. The period of absence of the petitioner is from 4-12-1974.

On the basis of the aforesaid facts counsel for the petitioner submitted that there cannot be abandonment by the petitioner of his services particularly when the petitioner was not permitted to join his duties, in spite of the fact that the petitioner submitted his joining on 9-3-1975 (Annexure-A-2) after the recovery of his ailment, then it cannot be treated to be a case of abandonment.

It is submitted by the learned counsel for the petitioner that the petitioner had been continuously making efforts, so that the petitioner may be permitted to join his duties. The question in the present case is that whether the absence of the petitioner can be treated to be an abandonment or relinquishment of his services ?

The question of abandonment shall depend upon various facts and circumstances of the case and particularly the intention of an incumbent to remain absent. In this reference profitably I will refer to G. T. Lad and Others Vs. Chemical and Fibres of India Ltd., para 5 and 6 which are relevant are quoted hereinbelow:

5. We will deal with these questions seriatim :

Re: Question No. 1 : In the Act, we do not find any definition of the expression "abandonment of service". In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. In the unabridged edition of the Random House Dictionary, the word "abandon" has been explained as meaning to leave completely and

finally; forsake utterly, to relinquish, renounce, to give up all concern in something". According to the Dictionary of English Law by Earl Jowitt (1959 edition) "abandonment" means "relinquishment of an interest or claim". According to Black's Law Dictionary "abandonment" when used in relation to an office means "voluntary relinquishment". It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual or imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute as "abandonment of office".

"6. From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In *The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another*, , it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.

The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another, the relevant portion of paragraph 5 is reproduced as under:

5... It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and, normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. But where parties agree upon the terms and conditions of service and they are included in certified Standing Orders, the doctrines of common law or considerations of equity would not be relevant....

On the basis of the aforesaid law laid down by the Apex Court in the aforesaid two judgments one has to ascertain whether the petitioner in view of the facts and circumstances of the case has abandoned his services? It is seen in the present case, according to the documents filed by the petitioner himself he was elected as the Sarpanch of the Gram Panchayat, Okharkhapri for a period from July, 1978 to July, 1983. The post of Sarpanch does not carry any remuneration. The question on the basis of the same has to be ascertained because of the

conduct of the petitioner whether the intention of the petitioner had been to relinquish his employment? The verification letter which has been filed on record by the petitioner himself issued from the office of the Deputy Director Panchayat and Social Welfare Deptt. dtd 5-7-1998 which is document No. 1 filed by the petitioner along with list of additional documents, itself shows that in view of the amendment in M.P. Panchayat Act, 1962 and in view of section 14 and 17 of this Act, the Govt. employees are not entitled to contest the election for the post of Sarpanch. The relevant section is also quoted which reads as under :

14. Qualification of candidate: Every person whose name is included in the list of voters shall, unless disqualified u/s 17 or under any other law for the time being in force, be qualified to be elected, appointed or co-opted, as the case may be, under this Act as a Sarpanch, Up-Sarpanch or a Panch of a Gram Panchayat.

Disqualifications for being Panch, Sarpanch and Up-Sarpanch of Gram Panchayat
(1) No person shall be eligible to a Panch, Sarpanch or an Up-Sarpanch of a Gram Panchayat who

(a) has, whether before or after the commencement of this Act, been convicted --

(i) of an offence under the Untouchability (Offences) Act, 1955 (22 of 1955), or under any law in connection with the use, consumption or sale of narcotics or any law corresponding thereto in force in any part of the State, unless a period of five years or such lesser period as the State Government may allow in any particular case has elapsed since his conviction; or

(ii) or any other offence and been sentenced to imprisonment for not less than six months, unless a period of five years or such lesser period as the State Government may allow in any particular case, has elapsed since his release; or

(b) is of unsound mind and stands so declared by a competent Court; or

(c) is an applicant to be adjudged an insolvent or is undischarged insolvent; or

[(d) holds an office of profit under the Panchayat or is in the service of any other local authority or the Central or State Government:

Provided that no person shall be deemed to have incurred disqualification under this clause by reason of being appointed as a Patel under the Madhya Pradesh Land Revenue Code, 1959 (20 of 1959)]; or

(e) has been dismissed from the service of the State Government or any local authority for corruption or disloyalty to the State unless a period of five years has elapsed since his dismissal; or

(f) has directly or indirectly any share or interest in any contract with, by or on behalf of, the Panchayat, while owning such share or interest; or

(g) is employed as paid legal practitioner on behalf of the Gram Panchayat; or

(h) is suffering from a variety of leprosy which is infectious; or

(i) has not paid all taxes due by him to the Gram Panchayat at the end of the financial year immediately preceding that in which the election is held or co-option or appointment is made in spite of a demand notice of not less than thirty days made therefore; or

(j) has voluntarily acquired the citizenship of a Foreign State, or is under any acknowledgment of allegiance or adherence to a Foreign State;

[(k) has been removed from, or disqualified from holding the office of a Panch, Gram Panch, Kendra Panch, Mandal Panch or member or office bearer of Gram Panchayat Gaon Panchayat, Gram Sabha, Panchayat Tahsil Panchayat, Kendra Panchayat, Mandal Panchayat or Janapada Sabha, as the case may be, constituted under the enactments specified in sections 379 and 388 during the period five years preceding the date of filing a nomination paper in any election to be held for the first time under the Act.

Explanation -- In this clause "office bearer" means a Sarpanch, Deputy Sarpanch, Up-Sarpanch. Gram Sarpanch, Gram Up-Sarpanch, Kendra Sarpanch, Kendra Up-Sarpanch, Mandal Sarpanch, Mandal Up-Sarpanch, President, Vice President, Pradhan, Up-Pradhan, Chairman or Vice Chairman, as the case may be, of the bodies constituted under the enactments referred to therein:]

Provided that a person shall not be deemed to have incurred disqualification under clause (f) by reason of his--

(i) having a share in any Joint Stock Company or a share or interest in any Association registered under the Madhya Pradesh Societies Registration Act, 1959 (1 of 1959), or in any Co-operative Society which shall contract with or be employed by or on behalf of the Gram Panchayat; or

(ii) having a share or interest in any newspaper in which any advertisement relating to the affairs of the Gram Panchayat is inserted; or

(iii) holding a debenture or being otherwise concerned in any loan raised by or on behalf of the Gram Panchayat;

Provided further that the disqualification under clause (i) shall be deemed to have been automatically removed as the Panchayat dues are paid in full:

[Provided also that the State Government may, for reasons to be recorded, remove any disqualification under clause (k)] (2) If a Panch or a Sarpanch or any Up-Sarpanch of a Gram Panchayat having been elected, appointed or co-opted.

(a) subsequently becomes subject to any of the disqualifications mentioned in sub-section (1) and such disqualification is not removable or being removable is not removed;

(b) accepts employment as legal practitioner against the Gram Panchayat;

(c) absents himself for more than four consecutive months from the meetings of the Gram Panchayat unless leave not exceeding six months, so to absent himself,

has been granted by the Gram Panchayat;

(d) absents himself from three consecutive meetings of the Gram Panchayat or does not attend half the number of meetings held during the period of six months without the leave of the Gram Panchayat;

(e) fails to pay any arrears of any kind due by him to the Gram Panchayat in spite of a demand notice of not less than thirty days made therefore;

(f) fails to pay any arrears of any kind due by him to the Gram Panchayat in spite of a demand notice of not less than thirty days made therefore; he shall, subject to the provisions of sub-section (3), cease to be a Panch or Sarpanch or an Up-Sarpanch and his office shall become vacant:

Provided that where an application is made by a Panch, Sarpanch or an Up-Sarpanch to the Gram Panchayat for leave to absent himself under clause (c) or clause (d) and the Gram Panchayat, fails to inform the applicant of its decision on the application within a period of one month from the date of receipt of the application, the leave applied for shall be deemed to have been granted by the Gram Panchayat.

(3) In every case, the authority competent to decide whether a vacancy has occurred under sub-section (2) shall be the Collector, who may give his decision either on an application made to him by any person, or of his own motion. Until the Collector decides that the vacancy has arisen, the person shall not cease to be a Panch, Sarpanch or an Upsarpanch as the case may be:

Provided that no order shall be passed under this sub-section by the Collector against any Panch, Sarpanch or any Up-Sarpanch without giving him a reasonable opportunity of being heard.

4) Any person aggrieved by the decision of the Collector under sub-section (3) may, within a period of 30 days from the date of such decision, appeal to the Commissioner and the orders of the Commissioner in such appeal shall be final.

Explanation : For removal of doubt it is hereby declared that a person ceasing to be a Sarpanch or an Up-Sarpanch under this section shall cease to be a Panch also.

On the basis of the same it is clear that a government servant while remaining in services cannot contest election either for the post of Panch or Sarpanch. On the basis of this conduct of the petitioner as the petitioner contested the election for the post of Sarpanch and was elected the petitioner held the office of Sarpanch for a period from July, 1978 till July, 1983, it is clear that the petitioner treated himself to be not a government servant and therefore he contested the election. Since the petitioner contested the election treating himself to be not a government servant as there was bar against the petitioner to contest the election while remaining in service, therefore, I am inclined to hold that the petitioner intentionally was absent and has relinquished the employment by

remaining absent for a considerable long period.

The another question in the present case further arises that when the petitioner was holding the post of Sarpanch during the period from 17-8-1983 no efforts were made by the petitioner to submit any representation to any of the higher authority that he is not permitted to join his duties. The representations which are referred in the letter dtd 1-7-1988 document No. 1 filed by the petitioners relates to the dates 9-3-1975, 4-6-1975, 7-11-1975, 1-3-1976, 2-8-1976, 5-12-1976, 1-5-1977 and lastly dtd 11-12-1977.

In view of the aforesaid, a further conduct of the petitioner is also relevant to be ascertained about the abandonment of services by the petitioner. Once the petitioner contested the election and was a successful candidate for the post of Sarpanch then at the time when the petitioner was holding the office of Sarpanch no efforts were made by the petitioner for permitting him to join his duties. Thus for a period of 5 years at the time when the petitioner was holding the office of Sarpanch the petitioner kept silent and only after 1983 when he was not holding the post of Sarpanch attempted to agitate his grievance that he is not permitted to join his duties. Thus for a period of July, 1978 to July, 1983 once I have already held that the petitioner's intention was to relinquish and abandon his services then for aforesaid period the petitioner cannot be permitted to be considered to be a government servant or even the petitioner cannot be deemed to be government servant if before July, 1983 the petitioner was not into the government service.

In this reference it is also to be seen from the letter dtd 1-7-1988 i.e. document No. 1 filed by the petitioner along with the additional list of document i.e. the letter which was said to have been sent by the petitioner. The respondents were stated that the same were not received and various letters sent by the petitioner on 9-3-1975, 4-6-1975, 7-11-1975, 1-3-1976, 2-8-1976, 5-12-1976, 1-5-1977 and lastly 11-12-1977 have not been received by the office at Mandla.

On the basis of the same, I am inclined to hold that various letters on which the reliance was placed by the petitioner, wherein the petitioner attempted to make out a case that he has submitted various letters and the petitioner was not permitted to join his duties such a stand is incorrect. It is to be seen that nothing further has been shown by the petitioner that even after joining as Sarpanch petitioner requested for joining. Thus the absence of the petitioner particularly during the time when the petitioner was holding the office of Sarpanch which is for a period of 5 years itself indicates that the petitioner has relinquished the employment in the present case.

It is to be seen that the total services of the petitioner after his regular appointment by a letter Annexure-A-1 was only for a period of 11 months 14 days. The total absence of the petitioner from 4-12-1974 was for a period of about more than 19 years and the absence is for a considerable long period. It is also to be noticed that when the petitioner was not permitted to join his duties

by the authorities then as to why the petitioner did not raised his grievance at the same time and why he has not filed any case before any competent forum as he was not permitted to join his duties. No explanation has been offered by the petitioner either in the petition or even at the time of arguments of the case. It is to be seen that in the present case the petitioner was already transferred to a different school on 4-12-1974 and was also relieved from the primary school, Thurki. The absence of the petitioner is from 7-12-1974. On the basis of the same it appears that when the petitioner came to know about his transfer then he remained absent from 4-12-1974. The petitioner appears to have come to know the proposal of his transfer and though the order of transfer was passed on 7-12-1974 then he remained absent from 4-12-1974 itself. The Fundamental Rule 18 reads as under :

F.R. 18. Effect of continuous absence. -- Unless the Governor in view of the exceptional circumstances of the case otherwise determines, no Government servant shall be granted leave of any kind for a continuous period exceeding five years.

The aforesaid Rule shows that unless the Governor in view of the exceptional circumstances of the case otherwise determines no leave in favour of government servant can be granted of any kind for a continuous period of exceeding five years. The effect of the aforesaid Rule is to terminate the lien because leave cannot be granted for continuous absence exceeding five years. In the present case the total absence of the petitioner is for a period of more than 19 years and thus in view of the FR 18 the petitioner's lien has rightly been terminated.

15A. Under the circumstances, I do not find any illegality in the impugned order as a consequence of the same the petition stands dismissed.