

(1967) 09 MP CK 0009
In the Madhya Pradesh High Court
Case No : Election Petition No. 49 of 1967

Upendralal

APPELLANT

Vs

Smt. Narainee Devi Jha

RESPONDENT

Date of Decision : 14-09-1967

Acts Referred:

Constitution of India, 1950 — Article 191(1), 213
Madhya Pradesh Government Servants (Temporary and Quasi Permanent Service)
Rules, 1960 — Rule 12
Representation of the People Act, 1951 — Section 123

Citation : AIR 1968 MP 89 : (1967) ILR (MP) 740 : (1967) JLJ 848 : (1969) 2 LLJ 285

Hon'ble Judges : S.P. Bhargava, J

Bench : Single Bench

Advocate : R.K. Pandey, for the Appellant; G.P. Singh and J.S. Verma, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Bhargava, J.—The petitioner Upendralal Choudhary challenges by this election petition the election of the respondent Smt. Narainee Devi Jha who was elected from Mandla Constituency No. 162 of the Vidhan Sabha of Madhya Pradesh. In the election many candidates had taken part but the petitioner has impleaded in his petition the respondent alone as the relief which he has sought in the petition is that the election of the respondent is void.

2. The grounds on which the petition is based may be stated thus. The petitioner urged that he was in temporary Government service of the State of Madhya Pradesh; that he had sent notice of his intention to terminate his service as Naib-Tahsildar on 29-11-1966; that he had sent one copy of the notice to the Collector, Narsinghpur, and the other to the Secretary, Revenue Department and the acknowledgment receipts of the said two notices respectively are Ex. P-3 and Ex. P-4 on record; that the notice on the State Government had been served on 29-11-1966 and therefore his services stood terminated as from 1-1-1967 on the

expiry of a period of one month from the date of the service of his notice, he being entitled to terminate his service by one month's notice under Rule 12 of the Madhya Pradesh Government Servants (Temporary and Quasi Permanent Service) Rules 1960; that though some charges had been already framed against him on 16-10-1965, he was not under suspension on the date he sent the said notice of the termination of his services and that he had been reinstated and was working at Narsinghpur when he sent the notice dated 29-11-1966; that as he was not in Government Service at the time when he filed his nomination paper in the month of January 1967, his nomination paper could not be legally rejected on the ground that he was disqualified to be a candidate under Article 191(a) of the Constitution and therefore his nomination paper had been wrongly rejected by the Returning Officer (Collector) Narsinghpur on 23-1-1967.

The second contention urged by the petitioner in his petition was that the nomination paper of the respondent had been wrongly accepted as she held an office of profit at all relevant times on account of her holding the office of District Honorary Family Planning Education Leader under the Government of India in the Ministry of Health (Director General of Health Services, New Delhi). It was averred in the petition that she was being granted honorarium of Rs. 2000 per year and that this rendered her disqualified to be a candidate for the State Legislature. The third contention advanced by the petitioner in his petition was that in order to facilitate the election of the party candidates the State Government mala fide declared that land revenue to the extent of Rs. 5 in sum and of land to the extent of 7.5 acres in area was to be exempt from the payment of land revenue. The said declaration was made in the Ordinance No. 19 of 1966 which came into force on 23rd December 1966. It was also urged that the number of tenants affected by the said Ordinance in the Constituency was very large, they being more than thirty thousand. It was alleged in the petition that the declaration of the said Ordinance amounted to corrupt practice of undue influence within the meaning of Section 123 of the Representation of the People Act, 1951, and rendered the election of the respondent void.

(After stating the defence of the respondent and the issues and finding that the petitioner was a temporary government servant (paras 3 to 9) the judgment proceeded):-

10. It is also clear from his statement Ex. P-2 which was made on 23-1-1967 before the Returning Officer that when he sent the notice of the termination of his services on 29-11-1966, a departmental enquiry was pending before the Collector, Jabalpur, against him and that the said enquiry was commenced under the orders of the Government on 19-1-1965 and that actually the charges for the enquiry and statement of allegations were received by him on 26-11-1965. The question therefore which arises for consideration is as to whether simply taking advantage of the fact that he had been reinstated and was not under suspension he could, by sending a notice of his intention to resign, terminate his services even when the enquiry was pending against him This question was fully

considered by a Division Bench of this Court in V.P. Gidroniya Vs. State of Madhya Pradesh and Others, . In that case the enquiry was against a Government servant who was placed under suspension by the Government.

Their Lordships considered the question of the Government servant's rights to give a notice under Rule 12 of the rules for termination of his services in paragraph 7 of their judgment and observed:

".....It must first be noted that the appointing authority possesses two powers, to terminate the services of a temporary public servant It can either discharge him purporting to exercise its powers under the terms of the contract of employment of the relevant rule. In such a case. Article 311 of the Constitution does not apply. The appointing authority can also act under its powers to dismiss or remove a temporary servant by way of punishment after complying with Article 311(2) of the Constitution. Even after a formal departmental enquiry has been initiated against a temporary servant, it is open to the authority to form the view that it is not necessary or expedient to terminate the services of a temporary servant by issuing an order of dismissal or removal against him and to stop the departmental enquiry and then pass an order of discharge in terms of the contract of employment or the relevant rule. The question when such an order of discharge would amount to an order of dismissal or removal attracting Article 311 of the Constitution, does not arise for consideration in this. This aspect of the matter has been dealt with in Jagdish Mitter Vs. The Union of India (UOI), . The point to be noted here is that where the appointing authority elects to dismiss or remove a temporary servant after holding a departmental enquiry and in accordance with Article 311(2) of the Constitution, then while the departmental enquiry is pending, neither the temporary Government servant nor the appointing authority can put an end to the services of the Government servant by passing an order in terms of the contract of employment or the relevant rule. The departmental enquiry has to be stopped first before the services of a temporary servant can be terminated in the exercise of the powers under the terms of the contract of employment or the relevant rule. As the departmental enquiry directed by Government against the petitioner was pending on 6th June, 1964, and is still pending, the petitioner is precluded from exercising his right under Rule 12 of the Rules and giving a notice to the appointing authority for termination of his services, and consequently the notice that he gave on 6th June 1964 was altogether ineffective and invalid."

Shri R.K. Pandey, learned counsel for the petitioner, urged that the aforesaid observations have no application in the present case as in the case before their Lordships the Government servant concerned was under suspension. He has argued that the observations quoted above cannot govern a case in which the Government servant was not under suspension at the time of the enquiry. I am unable to accept this contention as correct. The underlined (here in " ") portion of the observations reproduced above is of a very wide amplitude and fully applies to the case of a Government servant against whom an enquiry is being

made, whether he is suspended or not during the course of the enquiry The implications of the observations made in paragraph 7 of their Lordships" judgment have been made more explicit and clear in paragraph 8 where it has been observed: --

"The fact that the petitioner was suspended pending the departmental enquiry does not in any way alter the position. On the other hand, it reinforces the conclusion that during the period of suspension a temporary Government servant cannot exercise the right of having his services terminated by giving a notice to the appointing authority."

I, therefore, conclude that the ratio of V.P. Gidroniya Vs. State of Madhya Pradesh and Others, fully applies to the present case and the petitioner could not by his notice Ex. P-5 terminate his services automatically from 1-1-1967 or any other date. For these reasons, I answer the last portion of issue No. 1 (b) by saying that the services of the petitioner did not stand automatically terminated on 1-1-1967. On Issue No. 1 (c) I hold that the petitioner could not terminate his services during the pendency of the departmental enquiry against him by serving a notice. I decide issue No. 2 by holding that on 29-11-1966, when the said notice was given the petitioner was not under suspension and he had been reinstated. I decide issue No. 3 against the petitioner by holding that though Madhya Pradesh Government Servants (Temporary and Quasi Permanent Service) Rules, 1960 are applied to the petitioner, he could not, while the enquiry was pending against him, terminate his service by giving a notice under Rule 12 thereof.

11. Issue No. 4:- On the decision of issues Nos. 1, 2 and 3 in the manner they have been decided already, the result follows that the nomination paper of the petitioner was rightly rejected by the Returning Officer. The said issue is decided against the petitioner.

12. Issues 5 (b) and (e) :- The respondent has admitted that she held the office of Honorary Family Planning District Education Leader at the material times. Exs. R-3 and R-4 are admitted documents. Ex. R-3 is the letter of appointment sent by the Director General of Health Services to the respondent The first paragraph of the said letter reads as follows: -

"I am directed to convey the sanction of the Director General of Health Services to your appointment as Honorary Family Planning District Education Leader for the district shown below against your name and to the payment to you of an all inclusive grant-in-aid not exceeding Rs. 2,000 (Rupees two thousand) only per annum to meet actual expenditure on travelling, lodging and boarding while on tour and on clerical assistance in connection with the performance of the functions of your office.

Name District

Smt. Narayani Devi Jha".

13. In the second paragraph of the letter, it is stated that the payment of the grant-in-aid will be made to her in two instalments of Rs. 1000 each on the production of a bill prepared by the respondent in Form R. R. 42 copies of which were enclosed. The respondent was required to put her signatures on the form before drawing the amount of the grant-in-aid though it was made clear that she will not be required to render accounts of the expenditure. Paragraph 5 of the said letter required that a certificate to the effect that the grant-in-aid had been utilized for the purpose for which it was intended may be furnished through the State Family Planning Officer in due course, by Ex. R-3 the grant on the terms incorporated in Ex. R-5 the sanction of the President to the continued employment of the respondent as Honorary Family Planning Education Leader for district Mandla from 1st April, 1966 to 31st March 1967 and to the payment to her of an all inclusive grant-in-aid of Rs. 2,000 on the terms which are identical to the terms of Ex. R-3 is established. Exs. R-3, R-4 and R-5 leave no manner of doubt for concluding that though the office held by the respondent is an office under the Ministry of Health, Central Government, yet it is not an office of profit at all. The payment of Rs. 2,000 to her is not by way of honorarium but as a grant-in-aid to meet actual expenditure on travelling, lodging and boarding while on tour and on clerical assistance in connection with the performance of the functions of her office.

In this connection I may refer to *Ramdayal Ayodhyaprasad Gupta v. K.R. Patil* (1958) 18 Ele LR 378 (Ele. Tri. Nag); *Lachhman Singh v. Harparkash Kaur*, (1958) 49 Ele LR 417 (Punj); *Chikati Parasuram Naidu v. Vyricherla Chandra Chudamani Dev* (1957) 13 Ele. LR 66 (Ele. Tri. Rajahmundry) and *Shivaram Karanth v. Venkataramana Gowda*, (1953) 3 Ele LR 187 (Ele. Tri. Mangalore). In all these cases the principle settled is that payments under the rules which are only intended to cover the outer pocket expenses of members do not make the office of such members as being an office of profit within the meaning of Article 191 of the Constitution. To constitute an office of profit within the said Article prestige and like advantages attached to the office do not suffice. Pecuniary advantage is an essential element and once there is, or there can be, pecuniary gain, its quantum is immaterial. Applying these tests, in my opinion, the provision in Exs. R-3 to R-5 is only for the reimbursement of the actual out of pocket expenditure while the incumbent is required to perform her duties as the holder of the office and there is no element of personal gain envisaged in the provision for the grant-in-aid. Actually the requirement for payment is that the respondent must satisfy that the amount paid to her has been utilized for the purposes for which the grant was made. In this view, I hold that the office of Honorary Family Planning District Education Leader is not an office of profit and therefore the respondent was not disqualified for being a candidate at the election.

14. Issue No. 6 (a) :- Ordinance No. 19 of 1966 was promulgated in the M.P. Extraordinary Gazette dated 23rd December 1966. The preamble of the Ordinance itself states that the State Legislature was not in session and the

Governor of Madhya Pradesh was satisfied that circumstances existed which rendered it necessary for him to take immediate action. He, therefore, in exercise of the powers conferred by Article 213 of the Constitution of India made and promulgated the M.P. Land Revenue Code (Amendment) Ordinance No. 19 of 1966. By the said Ordinance, after Section 58 of the M.P. Land Revenue Code 1959 new Section 58-A was inserted which enacted that notwithstanding anything contained in the Land Revenue Code, no land revenue shall be payable in respect of an "uneconomic holding" used exclusively for the purpose of agriculture. In explanation (a) it was said that for the purposes of this section "uneconomic holding" shall mean a holding the extent of which does not exceed 7.5 acres and any holding the land revenue payable in respect whereof does not exceed five rupees. In explanation (b), "holding" for the purposes of this section shall mean the entire land held by a person in the State, notwithstanding the fact that any portion thereof is separately assessed to land revenue.

15. In the petition the Ordinance is stated to be the act of the State Government done to facilitate the election of the party candidates, meaning the candidates of the Congress Organization, and in para 14 it is further alleged that the State Government made the said declaration as an agent of the respondent or with her consent with the object directly or indirectly of inducing the majority of the electors to vote for the Congress candidate or to refrain from voting for non-Congress candidates. It is also said that it interfered with the free exercise of electoral right. In para 13 it is said that the said mala fide declaration had an effect of exercising undue influence in favour of the Congress candidate (the respondent) at Mandla Constituency named above. The language of Article 213 clearly indicates that it is the Governor and he alone who had got to satisfy himself as to the existence of circumstances necessitating the promulgation of an ordinance and the existence of such necessity is not a justiciable matter which the courts could be called upon to determine by applying an objective test. This view was taken by the Federal Court in *Lakhi Narayan Das v. Province of Bihar*, AIR 1950 FC 59 while dealing with an objection with regard to the validity of Bihar Maintenance of Public Order Ordinance (4 of 1949).

16. It is significant to note that the petitioner has not challenged the vires of the said Ordinance in this petition. It cannot be disputed that the Governor is the Constitutional Head of the State Executive under the Constitution. The Governor's decision on the question of necessity making the Ordinance is final and the validity of anything done by him cannot, be called in question on the ground that he ought or ought not to have acted in this diction. It is a tall claim made in the petition not supported by any reliable evidence that the State Government acted as an agent of the respondent for the promulgation of said ordinance. The Ordinance could not be promulgated by the State Government or the State Legislature under Article 213. Similarly, it is preposterous to claim that the act of the promulgation of the said Ordinance and the conferral of benefits under it amount to undue influence on the voters who are benefited by it.

It is observed that the benefit of the Ordinance flows to various persons falling in the category provided for in the Ordinance without reference to their political views or opinion. Taking benefit under the Ordinance is clearly and apparently taking benefit of a legal enactment and every citizen is entitled to take benefit of the law enacted. Taking such a benefit by itself does not and cannot amount to any corrupt practice under the Representation of the People Act. It cannot amount to undue influence or bribery unless the vires of the act was challenged and it were established that it was merely a colourable device to bring the mala fide legislation into force. For the reasons aforesaid, I decide issue No. 6 (a) against the petitioner and hold that the said Ordinance is not an act of the State Government which has been done as an agent of the respondent or with her consent and the said Ordinance cannot be held to have been issued mala fide to facilitate the election of the respondent on the possibility that due to the said Ordinance some of the voters might have made up their mind to vote for the Congress candidate. I decide issue No. 6 (b) against the petitioner by holding that the above Ordinance had no effect of exercising undue influence in favour of the respondent in the Constituency.

[After discussing the evidence, (in Pr. 17) the judgment stated]. It cannot be held as to what was the precise number of voters who were influenced by the Ordinance.

18. Issue No. 6 (d)- There is absolutely nothing to show that the issuing of the said Ordinance amounts to a corrupt practice. I hold that the said Ordinance in no sense amounts to a corrupt practice

19. Issue No. 7:- The petition was filed on 10-4-1967. It was filed on the 47th day from the date of the election of the returned candidate, the date of election being 20-2-1967, 8th and 9th April 1967 were holidays. Excluding these days, the petition has been filed within 45 days from the date of election of the returned candidate as required by Section 81(1) of the Representation of the People Act, 1951. The petition is therefore within time.

20. In the result, the petition fails and is dismissed with costs. Counsel's fee Rs. 600.

21. After the order was placed on the table for perusal of the counsel, I was informed by both the learned counsel that Miscellaneous Petn. No. 125/1967 (Upendralal Choudhary v. The State of M.P.) has been dismissed by the Constitution Bench Yesterday, namely, on 13-9- 1967. In trial petition the petitioner had sought the relief that it may be declared that he was no longer in Government service and for direction restraining the respondents from proceeding with the departmental enquiry initiated against him. The dismissal of the said petition strengthens the conclusions which I have already reached in paragraph 10 of my judgment while deciding issue No. 3.