

SUPREME COURT OF INDIA

Jaipal Singh

Vs.

Smt. Sumitra Mahajan

C.A.No.3749 of 2003

(V. N. Khare CJI. and S. H. Kapadia JJ.)

01.04.2004

ORDER

1. Whether the election petition filed by the appellant was lacking in material facts as required under section 83(1)(a) of the Representation of the People Act, 1951 (hereinafter referred to as 'the said Act') is the question which arises for determination in this appeal referred under Section 116-A of the said Act.

2. The appellant was a member of Indian Administrative Service having 40 years service to his credit and who was 59 $\frac{1}{2}$ years old. By letter dated 13.3.2002, he sought voluntary retirement under rule 16(2) of *All India Services (Death-cum-Retirement Benefits) Rules, 1958* (hereinafter referred to as 'the 1958 Rules') with immediate effect. Appellant was registered as an elector at 535, Halqa No. 62, Mujeggar Plot No. 9A, Sector-6, Faridabad in the State of Haryana and eligible to contest election to Rajya Sabha, in which two vacancies had occurred which were to be filled from the State of Haryana. A notification was issued to fill up the two vacancies under which the last date of filing the nomination papers was 14.3.2002, the date of scrutiny was 15.3.2002, last date of withdrawal was 18.3.2002 and the date of polling was 27.3.2003. The appellant sought voluntary retirement from service as he wanted to contest the election to Rajya Sabha. On 15.3.2003, the Returning Officer rejected the nomination papers to the appellant on the ground that rule 16 of 1958 Rules warranted giving three months previous notice to the appointing authority and since the said period had not elapsed on the date of scrutiny the appellant was holding the office of profit on that day, and therefore, stood disqualified under Article 102(1)(c) of the Constitution. On 18.3.2002, election results were announced, since there was no contest after rejection of the nomination papers submitted by the appellant. Aggrieved, the appellant filed election petition No. 27 of 2002 in the High Court on the ground that his nomination papers had been wrongly rejected by the Returning Officer. In the election petition, he stated that on completion of 40 years of service and on attaining the age of 59 $\frac{1}{2}$ years, he was eligible to seek voluntary retirement under the 1958 Rules; that he had applied for the same through proper channel on 13.3.2002; that he had also made a request to the appointing authority to waive notice period of three months for seeking voluntary retirement; that he had relinquished the charge on 13.3.2002; and consequently, he was not holding office of profit with the Government on that day and,

therefore, he was eligible to seek election to Rajya Sabha. In the election petition, the appellant further pleaded that his request was duly received by the Government of India, Ministry of Personnel - appointing authority and also by Government of Haryana at Chandigarh. He further averred that he sought voluntary retirement on account of illness of his wife and after resigning voluntarily from his post, he had filed nomination papers. He further averred that on the date of the scrutiny, he was present when he brought to the notice of the Returning Officer the factum of his voluntary retirement but the Returning Officer disregarded the provisions of the 1958 Rules as also the provisions of *All India Services (Conditions of Service- Residuary Matters) Rules, 1960* (hereinafter referred to as 'the 1960 Rules') as also Fundamental Rules, 1922. In the election petition, the appellant had alleged that the action of the Returning Officer in rejecting his nomination papers was not justified as the appointing authority has the power under the 1960 Rule to relax the condition and to waive the notice of three months in the case of an employee who seeks voluntary retirement. He further stated that since his nomination papers were rejected, there was no contest and results were declared on 18.3.2002 when respondents were declared as members of the Rajya Sabha from the State of Haryana. In the light of the above allegations, the appellant challenged the elections of the respondents on the ground of improper rejection of his nomination papers. The election petition was scrutinized by the Registry of the High Court, which was found to have been filed within period of limitation, and accordingly it was numbered and notices were issued to the respondents who appeared before the High Court on 31.7.2002 through their counsel. A joint written statement was filed by the respondents controverting the averments made by the appellant. A preliminary object was raised to the effect that the averments contained in the election petition were vague and lacked material facts and particulars, as such; the said petition was liable to be dismissed. In the written statement, the respondent submitted that the petition was liable to be dismissed as the appellant had not disclosed a material fact as to on which date he had received communication regarding acceptance of his application for voluntary retirement. On merits also, the respondents denied various averments made by the appellant.

3. On the above pleadings, a preliminary issue was framed by the High Court- as to whether the petition lacked in material facts and did not disclose cause of action. By the impugned judgment, the High Court held that section 83(1)(a) of the said Act mandates that an election petition shall contain a concise statement of material facts on which the petitioner relies; that in the present case, the appellant had failed to aver and plead two material facts viz. that his application for voluntary retirement was accepted by the appointing authority before the date of scrutiny and that his request for waiver of the notice period of three months was actually accepted. In the absence of disclosure of the above facts, the High Court dismissed the election petition.

4. Dr. Rajeev Dhavan, learned senior counsel appearing on behalf of the appellant submitted that in service jurisprudence, the effect of resignation' and voluntary retirement' is the same and there was no difference between the two. Learned counsel for the appellant urged that in this case the Court was not concerned with the merits of the matter of the effect of the letter of voluntary retirement dated 13.3.2002. In this connection, learned counsel submitted that the appellant had disclosed all the material facts concerning the present case viz., that he had

voluntarily retired from the service; that he had relinquished the charge w.e.f. 13.3.2002 and that he had made a request to the appointing authority to waive the notice period and that his request was duly received by the appointing authority on 13.3.2002. In the circumstances, it was submitted that all material facts have been stated in the election petition. It was urged that acceptance by the Government of the application of the appellant seeking permission to retire and requesting for waiver of notice were not material facts specifically required to be stated in the election petition and that they were circumstances which could have been examined by the Court at the time of trial. In this connection, it was further submitted that the retirement was complete, as far as the appellant was concerned, on 13.3.2002 and, therefore, the waive of notice period did not affect the voluntary retirement submitted by the appellant. It was urged that granting of waiver or consequences of waiver were questions of law which were not required to be pleaded in the petition and which were to be proved at the time of trial. It was also urged that similarly relinquishment of the post was a disputed fact which ought to have been decided at the stage of trial. For the above reasons, it was submitted that the High Court had erred in holding that the appellant had failed to aver material facts in terms of section 83(1)(a) of the said Act.

5. Aggrieved, the appellant has come to way of appeal to this Court under section 116-A of the said Act.

6. The short issue which arises for our determination is - whether election petition as filed by the appellant could have gone to trial. Section 83(1) of the said Act reads as under:

83. Contents of petition

(1) An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908(5) of 1908) for the verification of pleadings."

7. Section 83 deals with contents of petition. It states that an election petition shall contain a concise statement of material facts, on which the petitioner relies and shall state full particulars of any corrupt practices which petitioner alleges and which shall be signed by him and verified in the manner laid down in the Code of Civil Procedure. In the case of *Sopan Sukhdeo Sable and others vs. Assistant Charity Commissioner and others reported in*¹ it has been held that the Order VI Rule 2(1) of CPC deals with basic rule of pleadings and declares that the pleading has to state material facts and not the evidence; that there is a distinction

between 'material facts' and 'particulars' and the words material facts show that the facts necessary to formulate a complete cause of action must be stated. Omission of single material facts leads to an incomplete cause of action and consequently, the plaint becomes bad. The distinction between 'material facts' and 'particulars' was brought by Scott, L.J. in *Bruce vs. Odhams Press Ltd.*² in the following passage –

"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' statement is omitted, the statement of claim is bad, it is demurrable' in the old phraseology, and in the new is liable to be 'struck out' under R.S.C. Order XXV, Rule 4 (see *Philipps vs. Philipps*³: 'or a further and better statement of claim' may be ordered under Rule 7. The function of 'particulars' under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim- gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice of the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial."

8. The above dictum of Scott, L.J. in Bruce's case (supra), has been quoted with approval by this Court in the Case of Samant N. Balkrishna vs. George Fernandez).

9. As to what is the material fact has to be decided in the present case, in the context of the election petition under the said Act. An election petition is a matter of statutory right. In the petition the key issue was; whether the appellant held an office of profit on the date of scrutiny. For the purpose, appellant ought to have stated that on 13.3.2002 he had requested for waiver of the notice period; that the appointing authority had received the notice of 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 were the material facts which the appellant should have pleaded so that the returned candidates would not be taken by surprise. They were material facts within his knowledge and ought to have been pleaded in the election petition. Lastly even the letter of the appellant seeking the waiver of the notice period did not form part of the election petition. Hence, the High Court was right in dismissing the election petition for want of material facts.

10. We also do not find any merit on the argument advanced on behalf of the appellant 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 the case of Reserve Bank of India and Anr. vs. Cecil Dennis Solomon and Anr. reported in, this Court had laid down that in service jurisprudence there is a difference between 'voluntary retirement' and 'resignation' as they convey different connotations. It has been held that 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. Under rule 16 of the 1958 Rules, an employee who seeks voluntary retirement has to give three months notice to enable the employer to complete the designated mode of acceptance (See : *Halsbury's Law of England*⁴). Lastly, in a given case, the appointing authority may refuse to waive the said notice period which shows that resignation may be unilateral whereas voluntary retirement is bilateral. A similar question came before this Court in the case of UCO Bank and others vs. Sanwar Mal decided on 11.3.2004 vide Civil Appeal No. 3192 of 1999 (unreported), in which this Court has inter alia held that in the case of 'resignation', the relationship of employer and employee terminates on acceptance of resignation whereas in the case of 'retirement' voluntary or on superannuation, the relationship continues for the purposes of payment of retiral benefits. In the case of retirement there is a nexus between such retirement and retiral benefits. For the aforesaid reasons, we do not find any merit in the arguments advanced on behalf of the appellant.

11. Before concluding, we may state that several judgments were cited by the learned counsel for the appellant on the question as to what constitutes material facts. It is not necessary to discuss the said judgments as the answer depends on the facts of each case. In all the judgments cited on behalf of the appellant, it has been held by this Court that material facts are primary facts disclosing cause of action and such facts have got to be pleaded and failure to do so shall result in rejection of election petition though defect in material particulars can be cured at a later stage by amendment. In the present case, we are concerned with the application of the above law to the facts of this case. Hence, it is not necessary for us to burden this judgment with various authorities cited on behalf of the appellant.

12. In the result, this appeal fails and the same is dismissed accordingly, with no order as to costs.

¹(2004(2) Scale 82)

²1936 (1) KB 697)

³(1872) 4 QBD 127)

⁴4th Edition, Vol. 9 page 133