

SUPREME COURT OF INDIA

Chet Ram

Vs.

Jit Singh

C.A.No.6225 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

22.10.2008

JUDGMENT

S.B. Sinha, J:

1. Leave granted.

2. Whether a Gramin Dak Sewak is a government servant and consequently is disqualified to become a member of Nagar Panchayat in terms of Section 11(g) of the *Punjab State Election Commission Act, 1994* (for short "the Act") is the question involved herein.

3. The fact of the matter is being noticed from Civil Appeal arising out of SLP (C) No. 1610 of 2005. Indisputably, while working as Gramin Dak Sewak, appellant contested in an election for membership of Nagar Panchayat Sardulgarh held on 9.03.2003.

“Respondent No. 1 filed an election petition in terms of Sections 76, 79 and 89 of the Act and Rule 87 of the Punjab Municipal Election Rules, 1994 before the Election Tribunal. However, upon receipt of notice, appellant submitted his resignation.

We must, however, place on record that Harnek Singh, appellant in Civil Appeal arising out of SLP (C) No. 7276 of 2005, was chargesheeted for participating in politics.”

4. Contention of appellant that he was not a government employee having been working on part time basis and, thus, was not disqualified in terms of Section 11(g) of the Act was rejected by the Tribunal by reason of its judgment and order dated 25.08.2004 inter alia holding that having regard to the provisions of Rule 22(4) of the *Department of Posts, Gramin Dak Sewak (Conduct and Employment) Rules, 2001* (for short "the Rules") he stood disqualified.

5. An appeal was preferred thereagainst which was marked as FAO No. 4305 of 2004. By reason of the impugned judgment, the High Court held:

"The appellant is a part time employee of the post office under the Central Government, outside regular civil service. Nonetheless, he is holding this post under the Government and he is also entitled to protection under Article 311 of the Constitution, in view of the judgment of the Apex Court in Rajamma's case (supra) and other judgments. He is also getting remuneration by way of salary. He is appointed by and paid by Central Government and is under direct control of the Central Government. Case of Madhukar G.E. Pankakar (supra) relating to Insurance Medical practitioner appointed under the provisions of ESI Act is different. In the said case, the employee was not being paid directly by the Government nor was control of the Government direct, as observed in para 40 of the judgment. In the present case, position is different. The appellant was, thus, rightly held to be disqualified from contesting election."

Appellant is, thus, before us.

6. Mr. Punit Leekha, learned counsel appearing on behalf of the appellant would submit that a part time employee working in a post office does not hold any office of profit under the government and, therefore, the impugned judgment cannot be sustained. Strong reliance in this behalf has been placed on *Madhukar G.E. Pankakar v. Jaswant Chobbildas Rajani and Others*¹.

7. The learned counsel appearing on behalf of the respondent, on the other hand, would support the judgment.

8. The Act was enacted for constitution of a State Election Commission and for vesting the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Panchayats and Municipalities in the State of Punjab.

“Chapter II of the Act provides for constitution of the State Election Commission. Chapter IV of the Act provides for disqualifications. Section 11 of the Act provides that a person shall be disqualified for being chosen as and for being a member of a Panchayat or a Municipality inter alia if he holds an office of profit under the Government of India or any State Government.”

9. Indisputably, the terms and conditions of a Gramin Dak Sewak are governed by the provisions of the Rules; Sub-rule (4) of Rule 22 whereof reads as under:

"(4) No Sevak shall canvass or otherwise interfere with or use his influence in connection with, or take part in an election to any legislative or local authority;"

The said Rules were framed in terms of proviso appended to Article 309 of the Constitution of India. The terms and conditions of employment of a Gramin Dak Sewak are governed by statutory rules.

The Rules framed in terms of the proviso appended to Article 309 of the Constitution of India indisputably govern only government employees. It was, therefore, for appellant to show that he was not governed by the Rules. As noticed hereinbefore, Section 11(g) of the Act lays down the conditions for disqualification. Section 12 of the Act provides that if a question arises as to whether a member of any Panchayat or Municipality has become subject to any of the disqualifications specified in Article 243F or 243V of the Constitution of India or in Section 11 of the Act, the question shall be referred for decision of the State Government and its decision shall be final. It has furthermore been provided that before giving any decision on such question, the State Government shall obtain the opinion of the Election Commission and shall act in accordance thereof.

The same, however, would not mean that the Election Tribunal was not competent to decide the question as to whether the returned candidate was or was not qualified for being chosen as a member of Panchayat or Municipality.”

10. Chapter XII of the Act deals with election petitions. Section 73 of the Act provides for constitution of an Election Tribunal. Section 74 mandates that no election shall be called in question except by an election petition presented in accordance with the provision of Chapter XII. Section 75 lays down that only the Election Tribunal having jurisdiction shall have the power to adjudicate upon the election petitions. Section 79 provides that an applicant may in addition to claiming a declaration that the election of all or any of the returned candidates is void, may claim a further declaration that he himself or any other candidate may be declared as duly elected. Various provisions have been laid down as regards procedures to be followed in such petitions.

11. When an election petition is filed, all questions which arise for consideration by the Tribunal must be adjudicated upon on the basis of the materials brought on record by the parties. As regards eligibility of a candidate to contest in an election of the municipalities in question, the Tribunal had jurisdiction to determine the same. A finding has been arrived at by it on the basis of the materials brought on record that appellants were government employees. It is not denied or disputed that their terms and conditions of service were governed by the statutory rules.

In *Madhukar G.E. Pankakar (supra)*, whereupon reliance has been placed by Mr. Leekha, this Court in regard to the question as to whether an employee falls within the description of "office of profit under government" opined that for holding an office of profit under government one need not be in the service of government and there need not be any relationship of master and servant. It was furthermore held that all factors need not be conjointly present. However, as the petitioners therein were only insurance medical practitioners, it was held that they did not hold any office of profit inasmuch as the services rendered by them have no substantial link with the end, viz., the possible misuse of position as insurance medical practitioner in doing his duties as Municipal President.

We are conscious of the fact that Madhukar G.E. Pankakar (supra) has been referred to subsequently by this Court in *Shibu Soren v. Dayanand Sahay and Others*¹ and *M.V. Rajashekar and Others v. Vatal Nagaraj and Others*².

Whereas in the case of Shibu Soren (supra), the applicant was nominated by the State Government as the Chairman of the Interim Jharkhand Area Autonomous Council, which was a statutory organization, in the case of M.V. Rajashekar (supra), the applicant was only a member of a Commission.

In Shibu Soren (supra), this Court held:

"36. The question whether a person holds an office of profit, as already noticed, is required to be interpreted in a realistic manner having regard to the facts and circumstances of each case and relevant statutory provisions. While "a strict and narrow construction" may not be adopted which may have the effect of "shutting off many prominent and other eligible persons to contest the elections" but at the same time "in dealing with a statutory provision which imposes a disqualification on a citizen it would be unreasonable to take merely a broad and general view and ignore the essential points". The approach which appeals to us to interpret the expression "office of profit" is that it should be interpreted with the flavour of reality bearing in mind the object for enactment of Article 102(1)(a), namely, to eliminate or in any event to reduce the risk of conflict between the duty and interest amongst members of the legislature by ensuring that the legislature does not have persons who receive benefits from the executive and may thus be amenable to its influence."

The legal principles enunciated in Shibu Soren (supra) were followed in M.V. Rajashekar (supra) holding:

"...A conspectus of the aforesaid decisions of this Court unequivocally therefore indicates that the question has to be answered depending upon the facts peculiar to the case in hand with the object of finding out whether in fact the Government retains some control over the post which the incumbent was holding at the time of filing of nomination and was there any profit attached to the post in question. The underlined idea obviously is, that it should be free from any pressure from the Government so that there can be no conflict in discharge of his independent duties as a Member of the Legislative Assembly or the Legislative Council..."

The government employees are prohibited from taking part in election to a Panchayat or Nagar Panchayat. Such prohibition was introduced for obvious reasons. The legislative object in making the Rules is very clear, viz., the status enjoyed by a candidate shall not be allowed to be prejudicial vis-à-vis a candidate who does not enjoy such a status.

In *Guru Gobinda Basu v. Sankari Prasad Ghosal and Others*³ this Court held that an auditor of two government companies held an office of profit under government within the meaning of Article 102(1)(a) of the Constitution of India stating:

"Learned counsel for the respondents has been content to argue before us on the basis that the two companies having been incorporated under the Indian Companies Act, 1956 are separate legal entities distinct from Government. Even on that footing he has contended that in view of the provisions of Section 619 and other provisions of the Indian Companies Act, 1956, an auditor appointed by the Central Government and liable to be removed from office by the same Government, is a holder of an office of profit under the Government in respect of a company which is really a hundred per cent Government Company. 12. We think that this contention is correct. We agree with the High Court that for holding an office of profit under the Government, one need not be in the service of Government and there need be no relationship of master and servant between them. The Constitution itself makes a distinction between 'the holder of an office of profit under the Government' and 'the holder of a post or service under the Government'; see Articles 309 and 314. The Constitution has also made a distinction between 'the holder of an office of profit under the Government' and 'the holder of an office of profit under a local or other authority subject to the control of Government'; see Articles 58(2) and 66(4). In *Maulana Abdul Shakur v. Rishab Chand* the appellant was the manager of a school run by a committee of management formed under the provisions of the *Durgah Khwaja Saheb Act, 1955*. He was appointed by the administrator of the Durgah and was paid Rs 100 per month. The question arose whether he was disqualified to be chosen as a member of Parliament in view of Article 102(1)(a) of the Constitution. It was contended for the respondent in that case that under Sections 5 and 9 of the *Durgah Khwaja Saheb Act, 1955* the Government of India had the power of appointment and removal of members of the committee of management as also the power to appoint the administrator in consultation with the committee; therefore the appellant was under the control and supervision of the Government and that therefore he was holding an office of profit under the Government of India. This contention was repelled and this Court pointed out the distinction between 'the holder of an office of profit Government' and 'the holder of an office of profit under some other authority subject to the control of Government'. Mr Chaudhuri has contended before us that the decision is in his favour. He has argued that the appellant in the present case holds an office of profit under the Durgapur Projects Ltd. and the Hindustan Steel Ltd. which are incorporated under the Indian Companies Act; the fact that the Comptroller and Auditor-General or even the Government of India exercises some control does not make the appellant any the less a holder of office under the two companies. We do not think that this line of argument is correct."

[See also *Pradyut Bordoloi v. Swapan Roy*⁴, *Jaya Bachchan v. Union of India*⁵] was another case, where a similar question arose for consideration. It was held:

"6. Clause (1)(a) of Article 102 provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder. The term "holds an office of profit" though not defined, has been the subject-matter of interpretation, in several decisions of this Court. An office of profit is an office which is capable of yielding a profit or pecuniary gain. Holding an office under the Central or State Government, to which some pay, salary, emolument, remuneration or non-compensatory allowance is attached, is "holding an office of profit". The question whether a person holds an office of profit is required to be interpreted in a realistic manner. Nature of the payment must be considered as a matter of substance rather than of form. Nomenclature is not important. In fact, mere use of the word "honorarium" cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient. Payment of honorarium, in addition to daily allowances in the nature of compensatory allowances, rent free accommodation and chauffeur driven car at State expense, are clearly in the nature of remuneration and a source of pecuniary gain and hence constitute profit. For deciding the question as to whether one is holding an office of profit or not, what is relevant is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain. If the "pecuniary gain" is "receivable" in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not. If the office carries with it, or entitles the holder to, any pecuniary gain other than reimbursement of out of pocket/actual expenses, then the office will be an office of profit for the purpose of Article 102(1)(a). This position of law stands settled for over half a century commencing from the decisions of Ravanna Subanna v. G.S. Kaggeerappa, Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa, Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev and Shibu Soren v. Dayanand Sahay."

12. In *Union of India and Others v. Kameshwar Prasad*⁶ it was held:

"2. The Extra Departmental Agents system in the Department of Posts and Telegraphs is in vogue since 1854. The object underlying it is to cater to postal needs of the rural communities dispersed in remote areas. The system avails of the services of schoolmasters, shopkeepers, landlords and such other persons in a village who have the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure can assist the Department by way of gainful avocation and social service in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by the Department for the purpose. [See: Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department p. 1.]

3. The Extra Departmental Agents are government servants holding a civil post and are entitled to the protection of Article 311(2) of the Constitution (See: Supdt. of Post

Offices v. P.K. Rajamma). They are governed by separate set of rules, viz., the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (hereinafter referred to as "the Rules"). The Central Civil Services (Classification, Control and Appeal) Rules are not applicable to this category of employees in view of the notification dated 28-2-1957 issued by the Government of India under Rule 3(3) of the said Rules."

13. In view of the aforementioned authoritative pronouncements, the High Court must be held to be correct in arriving at its opinion that appellants were disqualified from contesting in the election of Nagar Panchayats. The appeals are dismissed accordingly. No costs.

¹(2001) 7 SCC 425

²(2002) 2 SCC 704

³AIR 1964 SC 254: (1964) 4 SCR 311

⁴(2001) 2 SCC 19

⁵(2006) 5 SCC 266

⁶(1997) 11 SCC 650