

## ALLAHABAD HIGH COURT

Lala Ram

Vs.

Gauri Shanker

Election Petn. No. 30 of 1980

(P.N. Harkauli, J.)

05.08.1981

### ORDER

#### **P.N. Harkauli, J.**

1. This Election Petition arises in the following circumstances:- ,  
In the year 1981 General Elections to the U. P. Vidhan Sabha were held. The respondent Gauri Shanker filed his nomination for the 302 Ajitmalt (Reserve) Vidhan Sabha Seat, Constituency of district Etawah. The petitioner also filed his nomination paper for contesting the aforesaid seat. The petitioner's nomination paper was, however, rejected by the Returning Officer on the ground that at the time of the filing of the nomination paper he was working as a Booking Clerk in the Auraiya Depot of U. P. State Road Transport Corporation and was thus holding an office of profit under the U. P. Government and he could not, therefore, be validly nominated as a candidate. In the election Gauri Shanker, respondent, was declared elected.

2. Thereupon the petitioner filed this Election petition contending that his nomination paper was wrongly rejected by the Returning Officer and on account of this wrong rejection of his nomination paper the election of the respondent was liable to be set aside. His contention that his nomination paper was wrongly rejected is based on two grounds: The first ground is that the petitioner had tendered his resignation on 28- 4-1980 before filing his nomination paper on 1-5-1980 and thus he could not be said to be in service of the U. P. State Road Transport Corporation on the date on which he filed his nomination paper. The second ground was that a person employed as a Booking Clerk in the U. P. State Road Transport Corporation, which was a corporate body and had a juristic entity of its own independent of the U. P. Government, could not be said to be a

servant of the U.P. Government and consequently even if the resignation tendered by the petitioner on 28-4-1980 did not become effective up to the date on which he filed his nomination, it could not be said that he was holding an office of profit under the Government.

3. The petition has been contested by the respondent, who contends that since the petitioner was admittedly initially employed in the U. P. Government Roadways, which was a Government Department, and his service had merely been placed on deputation with the U. P. State Road Transport Corporation, he did not cease to be a servant of the U. P. Government and his status as a Government servant continued. Accordingly, it was contended that the petitioner was disqualified from contesting the election. As regards the resignation tendered by the petitioner the respondent contended that the resignation submitted by the petitioner on 28-4-1980 had never been accepted and unless the resignation was accepted it could not become effective and it could not by itself have the effect of terminating the petitioner's service.

4. On these pleadings the following issues were framed:-

1. Was the petitioner, as a Clerk in the Auraiya Depot of the U. P. State Road Transport Corporation, not holding an office of profit under the Government of U. P.?
2. Was acceptance of the resignation of the petitioner not necessary to make it effective and did the resignation of the petitioner become effective the day it was submitted, that is to say, prior to the date of nomination, as alleged?
3. Was the nomination of the petitioner improperly rejected by the authority concerned?
4. To what relief, if any, is the petitioner entitled'?

## 5. FINDING

ISSUE No. 1 - The learned counsel for the petitioner in his statement recorded on the date of issues expressly admitted that initially the petitioner was a temporary employee in the U. P. Government Roadways, which was admittedly a Department of the Government. The learned counsel also admitted in' the

aforesaid statement that after the formation of the U.P. State Road Transport Corporation the petitioner was sent on deputation to the said Corporation and since then he had been in service of the U. P. State Road Transport Corporation. The contention of the petitioner is that since the said Corporation is an autonomous body and a juristic entity independent of the Government of Uttar Pradesh it cannot be said that at the time he filed his nomination paper he was a servant of the Government and was holding an office of profit under the Government. This question came up for consideration in *U.P. State Road Transport Corporation v. State of U.P.*,<sup>1</sup> which was decided by a Full Bench of the Lucknow Bench on December 24, 1980\*). In this case also the question arose as to whether the employees of the Government Roadways whose services were placed at the disposal of the U. P. State Road Transport Corporation continued to be Government servants or not, and T. S. Misra, J, speaking for himself and Hari Swarup. J. clearly observed as follows:

"A Government servant continues to enjoy the status of a Government servant even when he is sent on deputation....."

In view of this Full Bench decision, which is binding on me, it must be held that even after the petitioner was sent on deputation to the U. P. State Road Transport Corporation, he continued to be a Government servant. Issue No. 1 is decided accordingly.

ISSUE No. 2:- It is proved by the un rebutted evidence of Kanhai Singh (PW 1) that the petitioner submitted his resignation (Ex.P 4) on 28-4-1980 prior to the filing of his nomination on 1-5-1980. But the evidence of the petitioner's own witness Kanhai Singh (PW 1) shows that this resignation had not been accepted upto the date he came to give evidence. Indeed, it is interesting to note that according to Kanhai Singh, the petitioner drew subsistence allowance for the whole month of April 1980 and that he continued to draw the subsistence allowance till as late as February 1981. In other words, it is an undisputed fact that the petitioner's resignation had not been accepted till the date on which he filed his nomination paper. It is well settled that mere tendering of resignation is not sufficient for putting an, end to the service of a Government servant. In order to bring about the termination of the service of a Government servant acceptance of resignation is necessary. Consequently, in view of the admitted

fact that the resignation of the petitioner had not been accepted till the date on which he filed his nomination paper (indeed it was never accepted), I have no difficulty in holding that the petitioner did not cease to be a Government servant on 28-4-1980 and that he remained a Government servant on the date on which he filed his nomination paper. Issue No. 2 is decided accordingly.

ISSUE No. 3: - It is clear from Art. 191 of the Constitution of India as well as S. 36 of the Representation of the People Act. that a Government servant is disqualified from seeking election to the Vidhan Sabha and that if a Government servant files a nomination paper for such an election the Returning Officer shall reject his nomination paper. Accordingly, I hold that the nomination paper of the petitioner was rightly rejected by the Returning Officer. Issue No. 3 is decided accordingly.

ISSUE No. 4:- In view of the above findings, the petitioner is not entitled to any relief. In the circumstances of this case particularly the fact that there has not been much contest and only one witness was examined in all in the case, I am of the opinion that the parties should be directed to bear their own costs.

## 6. ORDER

The petition is dismissed. The parties will bear their own cost. Let intimation of the result be sent to the Election Commission and Hon. Speaker Vidhan Sabha as required by Section 103 of the Representation of the People Act, 1951.

Order accordingly.

Cases Referred.

1. (Writ petn. No. 168 of 1980)