

HIGH COURT OF CHHATTISGARH, BILASPUR

Election Petition No.1 of 2019

Order reserved on: 8-10-2021

Order delivered on: 24-11-2021

Tarika Tarangni, W/o Nirmal Lakra, aged about 39 years, Village Post Punjipatra, Tahsil Tamnar, Distt. Raigarh (C.G.)

---- Petitioner

Versus

1. Chakradhar Singh Sidar, Vill. Post Katakliya, Tahsil Lailunga, District Raigarh, Pin 496113
2. Satyanand Rathiya, Vill. Roopali, Post Kolam, Tahsil Tamnar, District Raigarh, Pin 496107
3. Darshana Sidar, Vill. Kamrga, Post Katakliya, Tahsil Lailunga, District Raigarh, Pin 496113
4. Sunil Minj, Village Bhuya Pani, PO Kurra, Katakliya, Tah. Lailunga, Distt. Raigarh, Pin 496113
5. Hridayaram Rathiya, At/PO Kurra, Tahsil Lailunga, Distt. Raigarh (C.G.) Pin 496113
6. Govind Singh Neti, Village Godhi, Tahsil Tamnar, District Raigarh, Pin 496107
7. Shivpal Bhagat, Village Sarasmal, PO Lailunga, Tahsil Tamnar, District Raigarh, Pin 496113
8. Suresh Kumar, Village Ghatgaon, Post Ghatoon, Distt. Raigarh (C.G.), Pin 496113
9. State Election Commission, Through State Election Commissioner, Near D.K.S. Bhawan, Old Mantralaya Road, Moti Bagh, Raipur, Chhattisgarh 492001
10. The Returning Officer (deleted)

---- Respondents

For Election Petitioner: Mr. Manohar Lal Sharma, Mr. Santosh Kumar Pandey and Mr. T.L. Bareth, Advocates.

For Respondent No.1: Mr. B.P. Sharma and Mr. Hari Agrawal, Advocates.

For Respondents No.2 to 9: -

None present.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The election petitioner herein has called in question the election of respondent No.1 herein (returned candidate) from Legislative Assembly Constituency No.15 Lailunga (ST), District Raigarh, on the ground enumerated under Section 100(1)(c) of the Representation of the People Act, 1951 (for short, 'the Act of 1951') that her nomination papers have been improperly rejected by the Returning Officer by its order dated 3-11-2018 vide Exhibits P-6A & P-6B.

2. **Election Petition by the Election Petitioner: -**

2.1) The election petitioner has filed this election petition stating inter alia that on 6-10-2018, the Election Commission of India published in the Government official Gazette of Chhattisgarh, the election notification dated 6-10-2018 under Section 15 of the Act of 1951 and declared assembly election in the State of Chhattisgarh and notified the dates of Chhattisgarh Legislative Assembly (Vidhan Sabha) elections to the polls in two phases. In order to contest election from Constituency No.15 Lailunga (ST), District Raigarh, the election petitioner herein obtained one set of nomination paper from the Returning Officer to file her nomination in the said election and on 31-10-2018 vide Exhibit P-1 she filed her nomination paper with affidavit and in reply to para (2) of Part 3A of the said nomination paper, she has categorically declared that she was not holding any office of profit under Central or State Government and it is the case of the election petitioner that the Returning Officer i.e. respondent No.10 herein (deleted) called her in office and directed her to file second nomination paper with correct answer to para (2) of Part 3A of the said nomination

paper whether she was holding any office under Central or State Government, and she was informed that in case the second nomination paper is not filed, the first nomination paper is likely to be rejected, on which the petitioner, on 1-11-2018, filed her second set of nomination paper for the said constituency with affidavit vide Exhibit P-2 declaring at para (2) of Part 3A that she was holding the post of Rural Health Officer (Female) and due to long absence from service, the Department did not permit her presence and did not allow her to appear and join the service since last two years.

2.2) It is the case of the election petitioner that vide Exhibit P-3, the Returning Officer fixed the date of scrutiny on 1-11-2018/3-11-2018 and on 1-11-2018, she was served with document Exhibit P-4 asking her to produce documents relating to her Government service by 2-11-2018 up-to 3 p.m. and thereafter, in compliance thereof, she filed an affidavit Exhibit P-5 stating that she was in Government job as Rural Health Officer (RHO) (Female) in Sub-Health Centre, Kurrog & Bahirkela; Community Health Centre, Tamnar; and Primary Health Centre, Saraipali, and she was on leave from 28-7-2016 to 31-7-2016, thereafter, on 5-11-2016, when she communicated her joining, same was not accepted by letter dated 10-11-2016 and as such, she finally concluded that no departmental enquiry was instituted against her and since she is not in service from 1-8-2016 to 2-11-2018, on the pressure of Jindal Company, her services have been terminated and thus, she is not holding any office of profit. Both the nomination papers were considered by the Returning Officer and vide Exhibits P-6A & P-6B, the two nomination papers were rejected by the Returning Officer on 3-11-2018 holding that she has not filed any document to

show that she has been terminated from service or she has resigned from service. On 20-11-2018, polling of that constituency took place and after 11-12-2018, counting process was completed and respondent No.1 was declared elected from the said constituency which has been called in question by the election petitioner in this election petition.

2.3) It is the further case of the election petitioner that her nomination papers have improperly been rejected, as the first set of nomination paper filed by her to contest the election from Constituency No.15 Lailunga (ST), District Raigarh was not rejected by the Returning Officer till date, therefore, she was entitled to contest the election. It is further submitted that since the first set of nomination paper was rejected only after she filed the second set of nomination paper and since the 1st set of nomination paper had no objection / defect of any kind, therefore, the Returning Officer could not have rejected the first nomination paper by rejecting the second nomination, it is a clear case of violation of Section 36 of the Act of 1951 and contrary to law and as such, both the nomination papers have improperly been rejected in violation of Section 36(3) of the Act of 1961. As such, her nomination papers have improperly been rejected and consequently, the election of respondent No.1 deserves to be declared void.

3. **Written Statement by the Returned Candidate: -**

3.1) Written statement has been filed only by respondent No.1 denying the averments made in the election petition stating that rejection of two nomination papers of the election petitioner by the Returning Officer is fully justified and the election petitioner in her election petition has not disputed the fact that she was working in the

Department of Health as Rural Health Officer (Female) and the election petitioner was under misconception that due to her long absence and on account of some outside forces, her services have been terminated which is false to the knowledge of the petitioner herself. As such, the petitioner was in Government service on the date of filing nomination paper and she could not file documents showing that she has resigned from service or she has been terminated from service in accordance with the relevant provisions contained in the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, 'the Rules of 1966') and therefore she is not qualified for being elected as a Member of Legislative Assembly and her nomination has rightly been rejected.

3.2) Specific statement has been made by respondent No.1 in paragraph 40 of the written statement stating inter alia that since the election petitioner was in Government service, the Returning Officer vide Exhibit P-4 has rightly granted one day time till 2-11-2018 up to 3 p.m. to the election petitioner to file documents qua the Government service, but the petitioner could not substantiate that she has already resigned from service. It has been further averred that although the petitioner has filed affidavit vide Exhibit P-5 that her services have been terminated, but documents demonstrating her termination were not filed, therefore, vide Exhibits P-6A & P-6B, the Returning Officer was justified in rejecting her nomination papers, as the petitioner's services can be terminated except only in accordance with the Rules of 1966. Therefore, the nomination papers of the petitioner have rightly been rejected by the Returning Officer. It has also been pleaded that qualifications for membership of a Legislative Assembly

have been stated in Section 5 of the Act of 1951 which has to be read along with Article 191(1)(a) of the Constitution of India which provides that a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State, if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder. Since the petitioner was holding the office of profit as she was, on the date of scrutiny of nomination paper, in Government service being Rural Health Officer (Female) which is an office of profit and which is a disqualification of membership being a Government servant, drawing or entitled to draw salary from the Government on account of holding post, therefore, the petitioner was disqualified under Article 191(1)(a) of the Constitution of India and as such, the Returning Officer was fully justified in rejecting the nomination papers after affording opportunity of hearing to the petitioner and as such, the election petition is liable to be dismissed.

4. **Issues and Findings on the Issues:** -

On the basis of pleadings made by the parties, following issues were framed and corresponding answers / findings are noted against each one of them: -

S.No.	Issues	Findings
1.	Whether the election of respondent No.1 from Lailunga Legislative Assembly Constituency No.15 (Scheduled Tribe), Distt. Raigarh, is liable to be declared void under Section 100(1)(c) of the Representation of the People Act, 1951 for improper rejection of election	“NO”

	petitioner's nomination paper by order dated 3-11-2018 by the Returning Officer on the ground of her being in service of the State Government?	
2.	Whether the election petition as framed and filed is liable to be dismissed for non-compliance of the mandatory provisions of the Representation of the People Act, 1951 including the proviso to Section 83 of the said Act and Rule 94A of the Conduct of Election Rules, 1961?	This issue has already been adjudicated as preliminary issue by order dated 26-7-2021 and review petition against that order has also been dismissed by order dated 4-10-2021.
3.	Relief and cost(s) which the election petitioner is entitled for?	Election petitioner is not entitled for any relief as per paragraph 42 of this judgment.

5. In order to prove her case that her nomination papers were improperly rejected by the Returning Officer, though the election petitioner has entered into the witness box as PW-1, but she has not filed her affidavit under Order 18 Rule 4 of the CPC and only in her examination-in-chief before the Court, she has exhibited documents Exhibits P-1 to P-5, P-6A & P-6B. When the evidence of the election petitioner commenced on 10-9-2021, learned counsel for respondent No.1 has filed an application under Order 18 Rule 4 of the CPC that the election petitioner has not filed her affidavit under Order 18 Rule 4 of the CPC, therefore, she is not entitled to record her evidence and prayed for a direction to the election petitioner to comply with the mandatory statutory provisions contained in Order 18 Rule 4 of the CPC while proceeding with examination / evidence of herself and / or her witnesses on which the order was reserved and to be considered at the time of final hearing / order.
6. Since the election petitioner did not choose to file affidavit under Order

18 Rule 4 of the CPC before commencement of trial of election petition and only choose to enter the witness box to prove the documents vide Exhibits P-1 to P-5, P-6A & P-6B, it is the choice of the election petitioner to file or not to file affidavit under Order 18 Rule 4 of the CPC, but she cannot be compelled to do so as she had already entered the witness box on 10-9-2021 and she has been extensively cross-examined by and on behalf of respondent No.1. As such, this application I.A.No.12/2021 is accordingly disposed of.

7. Similarly, learned counsel for respondent No.1 raised a strong objection that the documents Exhibits P-1 to P-6, P-6A & P-6B are inadmissible in evidence and the election petitioner cannot prove those documents. Documents Exhibits P-1 to P-6, P-6A & P-6B are public documents and certified copies of which have been produced before the court at the instance of the election petitioner and which have been marked as exhibits. It is well settled law that mere marking of a document as an exhibit does not dispense with the proof of the document (see Sait Tarajee Khimchand and others v. Yelamarti Satyam and others¹). Therefore, the objection raised on behalf of respondent No.1 in this regard is hereby rejected.

8. In order to prove her case, the election petitioner examined herself as PW-1 and has produced documents Exhibits P-1 to P-5, P-6A & P-6B on 10-9-2021. Similarly, in opposition, though respondent No.1 did not enter into the witness box, his election agent namely, Om Sagar Patel (DW-1) has entered into the witness box and Returning Officer Ashok Kumar Marbal has been examined as DW-2. Respondent No.1 has brought documents Exhibits D-1 to D-8 on record. Ashok Kumar

1 AIR 1971 SC 1865

Marbal (DW-2) – Returning Officer has proved his signature on Exhibits P-4, P-6A & P-6B and also stated that he has rejected the nomination papers vide Exhibits P-6A & P-6B by order dated 3-11-2018.

9. **Submissions on behalf of the parties: -**

9.1) Mr. Manohar Lal Sharma, learned counsel appearing on behalf of the election petitioner, would submit as under: -

1. The Returning Officer – respondent No.10 herein (deleted) has acted in improper manner firstly, by examining the nomination paper at the time of submission (before the date of scrutiny) and directed for submission of documents regarding Government service vide Exhibit P-4 and secondly, by rejecting both the nomination papers on the same date on the ground of the election petitioner being in Government service and has not filed documents showing resignation or otherwise, particularly when the election petitioner in her first nomination, has not said that she is a holder of the office of profit, as such, her nomination papers were improperly rejected.
2. The election petitioner was not in Government service as Rural Health Officer (Female) at the relevant point of time as her services were terminated on the pressure applied by Jindal company and she is not in service from 1-8-2016 to 2-11-2018 and she was not holding the office of profit as she has clearly stated in the affidavit filed before the Returning Officer vide Exhibit P-5 on 2-11-2018. The order of the Returning Officer vide Exhibits P-6A & P-6B was totally a wrong and perverse order and is violative of Article 21 of the Constitution of India

and is also violative of Sections 30, 35 & 36 of the Act of 1951.

The election petitioner was never holding any office of profit and she has been terminated and is covered by Section 25F of the Industrial Disputes Act, 1947, and relied upon the following judgments of the Supreme Court and other High Courts: -

1. Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others² (Supreme Court).
2. Bangalore Water-Supply & Sewerage Board, etc. v. R. Rajappa and others³ (Supreme Court).
3. The Divisional Forest Manager v. Shri Vinayak Kurne⁴ (Bombay High Court).
4. State of Rajasthan and others v. Harish Chandra Sharma and others⁵ (Rajasthan High Court).
5. Mukundbhai Mangaldas Shrimali v. State of Gujarat⁶ (Gujarat High Court).

9.2) Mr. B.P. Sharma and Mr. Hari Agrawal, learned counsel appearing for respondent No.1, would submit that the Returning Officer has acted as per the directions contained in the Handbook for Returning Officer 2018 issued by the State Election Commission, which provides that he shall take decision by conducting preliminary examination of nomination papers immediately upon receiving the same and asking for submission of relevant documents relating to Government service. Thus, as per the directions / instructions, the Returning Officer has to scrutinize all the nomination papers together

2 AIR 1978 SC 851

3 AIR 1978 SC 548

4 W.P.No.3208/2011, decided on 27-9-2011

5 RLW 2006 (4) Raj 3028

6 Special Civil Application No.11028/2001, decided on 30-6-2016

in view of the provisions contained in clause 6.5 of the aforesaid Handbook and as such, both the nomination papers were rightly rejected by the Returning Officer on 3-11-2018 vide Exhibits P-6A & P-6B. Since the election petitioner was in Government service, Rule 5 of the Chhattisgarh Civil Services (Conduct) Rules, 1965, bars a Government servant to take part in an election to the legislature or the local authority. Similarly, unless an express order after departmental enquiry is passed, merely on account of absence from duty after expiry of leave, it cannot be presumed that her services have been terminated in view of Rule 24 of the Chhattisgarh Civil Services (Leave) Rules, 1977. It was also submitted that since the election petitioner was admittedly in Government service and she was holding the office of profit in terms of Article 191(1)(a) of the Constitution of India, she was disqualified from contesting election and being chosen as a Member of Legislative Assembly and as such, her nomination papers were rightly rejected by the Returning Officer and thus, the election petition deserves to be dismissed.

10. Except respondent No.1 other respondents have not chosen to appear and contest the election petition and no written statement was filed on their behalf, as such, they have been proceeded ex parte in this election petition.
11. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
12. **Reasons for finding on issues: -**

Issue No.1: -

For the sake of convenience, issue No.1 is divided in two parts in the following manner: -

1. Whether, on the date of filing nomination papers vide Exhibits P-1 & P-2, the election petitioner was in Government service in the Department of Health, as Rural Health Officer (Female) under the State of Chhattisgarh and as such, the Returning Officer – respondent No.10 herein (deleted) was justified in rejecting her nomination papers on the ground of she being in Government service by taking both the nomination papers simultaneously?

and / or

2. Whether, the election petitioner was disqualified for being chosen as a Member of Legislative Assembly on account of her holding the post of RHO (F) under the Government of Chhattisgarh being an office of profit and therefore in terms of Article 191(1)(a) of the Constitution of India disqualified from being chosen as a Member of Legislative Assembly?
13. The election petitioner being an elector for Legislative Assembly Constituency No.15 Lailunga (ST), District Raigarh, in order to contest election from the said constituency submitted her first nomination paper to the Returning Officer vide Exhibit P-1 on 31-10-2018 in which in Part 3A, para (2), she has clearly stated that she is not holding any office of profit either under the State Government or under the Union of India and thereafter, she submitted second nomination paper vide Exhibit P-2 on 1-11-2018 at 2.45 p.m. clearly stating in Part 3A, para (2), that she was holding the office of profit as Rural Health Officer (Female) in the Department of Health, but on account of her long

absence, her joining has not been accepted and for last two years, she has not been allowed to work in the district office. The Returning Officer vide Exhibit P-3, after preliminary examination, on 1-11-2018 at 3.12 p.m., issued document Exhibit P-4 directing the election petitioner to produce documents qua her Government service by 2-11-2018 till 3 p.m.. In compliance of Exhibit P-4, the election petitioner filed affidavit Exhibit P-5 in which she has stated that from 8-8-2002 to 31-7-2016, she was in regular Government service as RHO (F) in Sub-Health Centre, Kurrog & Bahirkela; Community Health Centre, Tamnar; and Primary Health Centre, Saraipali, and she was on leave from 28-7-2016 to 31-7-2016, but thereafter, she has not been allowed to join, and finally, in paragraph 10, she has concluded that from 1-8-2016 to 2-11-2018, for two years, she is not in Government service and under the pressure of Jindal company, her services have been terminated and she is not holding office either under the Central or State Government. The election petitioner has filed documents in nine pages along with the affidavit which have been produced and exhibited by respondent No.1 and proved by the election petitioner vide Exhibits D-1 to D-8. On receipt of documents Exhibit P-5 and Exhibits D-1 to D-8, the Returning Officer vide Exhibits P-6A & P-6B, rejected both the nomination papers, as the election petitioner herself has admitted being in Government service but she has not produced any document of resignation demonstrating that her resignation has been accepted by the competent authority within the time limit fixed and accordingly, proceeded to reject the nominations vide Exhibits P-6A & P-6B and thereafter, the election as scheduled was held in which respondent No.1 has been declared elected which is sought to be

challenged by the petitioner on the sole ground that her nomination papers have been improperly rejected by the Returning Officer.

14. The first and foremost objection that has been taken on behalf of the election petitioner is that both the nomination papers Exhibits P-1 & P-2 were considered and rejected simultaneously, they ought to have been considered separately. It is the case of the petitioner that the Returning Officer made preliminary examination of her first nomination paper and directed her to file second nomination paper, and under the threat of rejection of her first nomination paper, she has filed the second nomination paper.
15. Mr. Ashok Kumar Marbal, who at the relevant point of time functioned as Returning Officer, has been examined as DW-2. In his evidence before the Court, he has clearly stated that following the procedure prescribed in the Handbook for Returning Officer 2018 issued by the State Election Commission and the procedure prescribed for scrutiny of nomination papers and upon preliminary examination as prescribed in clause 5.11.1. and in view of the fact that the petitioner herself having stated in Exhibit P-2 that she is holding the office of profit being RHO (F) in the Department of Health and her joining has not been accepted on account of long absence, Exhibit P-4 was issued to her in the format prescribed in the said Handbook to which the petitioner has submitted reply in shape of affidavit Exhibit P-5 and as per the procedure contained in clause 6.5. of the aforesaid Handbook, both the nomination papers have scrutinized simultaneously.
16. In order to decide the said plea, it would be appropriate to notice clause 6.5.1. of the Handbook for Returning Officer 2018 contained in clause 6.5. which provides for Scrutinization of all nomination papers.

Clause 6.5.1. states as under: -

“6.5. ALL NOMINATION PAPERS TO BE SCRUTINIZED

6.5.1. Returning Officer should then take up nomination papers one after another and scrutinize them. If more than one nomination paper has been presented by or on behalf of one candidate, he/she should take them up together and scrutinize them one after another. It would not be correct or legal to pass over other nomination papers of a candidate without scrutiny, merely because one or more nomination papers of that candidate have been already found valid by the Returning Officer.”

17. A careful perusal of the aforesaid provision would show that if more than one nomination paper has been presented by or on behalf of one candidate, all nomination papers have to be taken together and have to be scrutinized one after another, meaning thereby, all the nomination papers have to be taken together and they are not supposed to be decided separately. In the instant case, since the election petitioner has filed two nomination papers vide Exhibits P-1 & P-2 for contesting the election in Lailunga Assembly Constituency No.15 (ST), both the nomination papers were considered together by the Returning Officer and in view of reply made by the petitioner in Part 3A, para (2) of Exhibit P-2 that she was holding the office of profit but she has not been allowed to join, Exhibit P-4 was issued to the petitioner and thereafter, considering her affidavit Exhibit P-5, both the nomination papers were rejected vide Exhibits P-6A & P-6B. As such, the Returning Officer has rightly followed the procedure and rightly took-up the nomination papers Exhibits P-1 & P-2 together and rightly considered the same together as per the procedure prescribed by considering the two nomination papers filed by one candidate and thus, no objection could have been taken in that respect that both the

nomination papers could have been decided separately. The procedure followed by the Returning Officer in considering both the nomination papers simultaneously is in accordance with clause 6.5. of the Handbook for Returning Officer 2018 and otherwise also, it is established practice to consider the two nomination papers of one candidate together, which cannot be said to be erroneous or illegal in law. I do not find any merit in the contention raised by learned counsel for the petitioner that both the nomination papers could not have been considered simultaneously at the time of scrutiny and therefore the nomination paper Exhibit P-1 could have been rejected as there was no objection in that regard.

18. It is the case of the election petitioner that though she was holding the post of Rural Health Officer (Female) in the Department of Health as a regular Government servant from 8-8-2002 to 31-7-2016 and she remained on leave from 28-7-2016 to 31-7-2016, but thereafter, when she submitted letter dated 5-11-2016 for joining, it was not accepted and number of letters vide Exhibits D-1 to D-3 were submitted by her for joining and finally, she was given a letter by the Block Medical Officer, Tamnar to obtain permission from the Chief Medical & Health Officer, Distt. Raigarh, to join in the Government service, vide Exhibit D-4, thereafter, she also submitted letters to the CMHO, Distt. Raigarh, vide Exhibits D-5 to D-8, but she was not allowed to join in service and thus, she is not in Government service from 1-8-2016 to 2-11-2018 and as such, her services have been terminated on the pressure of Jindal company and she is not holding any office of profit under the State or the Central Government. Document Exhibit P-2 is the document of the election petitioner herself in which she has stated

in Part 3A, para (2), as under: -

भाग 3क
(अभ्यर्थी द्वारा भरा जाए)

(1) XXX XXX XXX
 XXX XXX XXX
 XXX XXX XXX

“(2) क्या अभ्यर्थी भारत सरकार या राज्य सरकार के अधीन कोई लाभ का पद धारण कर रहा है ? स्वा. विभाग (R.H.O.F.) (हां/ नहीं).[✓]

यदि हां, धारित पद के ब्यौरे लंबे समय से अनुपस्थित रहने के कारण विभाग ने मेरी उपस्थिति मान्य नहीं की 2 वर्षों से मुझे जिला कार्यालय से कार्य में अपस्थित होने की अनुमति नहीं दी गई है ।

19. It is appropriate to mention here that Exhibit P-2 is the document of the election petitioner herself and in her cross-examination, paragraph 5, she has clearly stated the aforesaid fact to be correct. Similarly in the affidavit submitted by her before the Returning Officer (Exhibit P-5), she has specifically stated that she was in Government service from 8-8-2002 to 31-7-2016 as RHO (F) in Sub-Health Centre, Kurrog & Bahirkela; Community Health Centre, Tamnar; and Primary Health Centre, Saraipali. As such, the fact of the election petitioner being a Government servant on the date of nomination is not in dispute. What she has stated in Exhibit P-2, in Part 3A, para (2), as well as in Exhibit P-5 is that she was not allowed to join despite several letters Exhibits D-1 to D-3 & D-5 to D-8 and no departmental enquiry was held against her and she is not in Government service from 1-8-2016 to 2-11-2018 for last two years and on the pressure of Jindal company, her services have been terminated and she is not holding the office of profit and same amounts to oral termination of service.

20. As such, it is duly established from the aforesaid facts that the election petitioner was appointed as regular Government servant in the

Department of Health as RHO (F) in August, 2008, she was a regular Government servant and she continued on the post up to 31-7-2016. On 28-7-2016, she proceeded on leave up to 31-7-2016, but thereafter, on 5-11-2016, it is her case that she was not allowed to join in the Government service which is apparent from Exhibits D-1 to D-3 and vide Exhibit D-4, the Block Medical Officer, Tamnar asked her to seek permission from the CMHO, Distt. Raigarh which she submitted asking for her joining vide Exhibits D-5 to D-8, but she was not permitted to join. As such, it is a case of absence from service after expiry of leave.

21. Rule 24 of the Chhattisgarh Civil Services (Leave) Rules, 1977 (for short, 'the Rules of 1977') provides the consequence of absence from duty after expiry of leave. It states as under: -

“24. Absence after expiry of leave.—(1) Unless the authority competent to grant leave extends the leave, Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half pay leave to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.

(2) Willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.”

22. A careful perusal of the aforesaid rule would show that in case of long absence or remaining absent after the end of leave without grant by the competent authority, the Government servant is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account. Similarly, by virtue of sub-rule (2) of Rule 24 of the Rules of 1977, willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary

action. Pursuant to the departmental proceeding, a Government servant can be inflicted the penalties set-out in Rule 10 of the Rules of 1966 which can be minor penalties as well as major penalties and which rests exclusively within the jurisdiction and domain of the disciplinary authority. However, in view of Rule 24(2) of the Rules of 1977, long absence after expiry of leave will not amount to automatic termination of service as for termination of service there has to be a departmental enquiry in case of regular Government servant in accordance with the Rules of 1966 and penalty of termination can be inflicted as major penalty after recording a finding of grave misconduct, except in cases covered by 2nd proviso to sub-clause (2) of Article 311 of the Constitution of India, where the authority empowered to dismiss or remove / reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry.

23. Admittedly, in the present case, on the own showing of the election petitioner vide Exhibit P-5 in paragraph 9, it has clearly been stated that no departmental enquiry was instituted against her and as such, there is no order of termination passed against her. The petitioner has only stated in paragraph 10 of Exhibit P-5 that she is not in Government service with effect from 1-8-2016 to the date of scrutiny i.e. 2-11-2018 and her services have been terminated that too on the pressure of Jindal company and she is not holding any office of profit which the Returning Officer did not accept holding that since the petitioner is in regular Government servant and she has not produced the order of termination or letter of resignation within the time limit given by him, therefore, in that view of the matter, her nomination

papers are rejected, and thus, the Returning Officer did not accept the fact of oral termination from service claimed by the election petitioner.

24. At this stage, it would be extremely relevant to notice Rule 5 of the Chhattisgarh Civil Services (Conduct) Rules, 1965 (for short, 'the Rules of 1965') by which the Government servants are barred from participating in the election of any legislature or local authority. Sub-rule (4) of Rule 5 of the Rules of 1965 states as under: -

“5. Taking part in politics and elections.—(1) to (3) xxx xxx

(4) No Government servant shall canvas or otherwise interfere with, or use his influence in connection with or take part in, an election to any legislature or local authority :

Provided that—

(i) a Government servant qualified to vote at such election may exercise his right to vote, but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted;

(ii) a Government servant shall not be deemed to have contravened the provisions of this sub-rule by reason only that he assists in the conduct of an election in the due performance of a duty imposed on him by or under any law for the time being in force.

Explanation.—The display by a Government servant on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this sub-rule.”

25. A focused glance of the aforesaid provision would show that the legislature has designedly thought it expedient to restrain / injunct the Government servant either to canvas or otherwise interfere with, or use his influence in connection with or take part in, an election to any legislature or local authority. The legislative object of enacting such rule is that the status enjoyed by the candidates shall not be allowed to be prejudicial vis-a-vis candidates who do not enjoy such a status.

As such, the election petitioner being a regular Government servant on the date of filing nomination was by virtue of Rule 5(4) of the Rules of 1965 specifically prohibited from taking part in the election to the legislature, as the said provision is imperative in nature being the legislative injunction restraining the Government servant from taking part in election to any legislature or local authority, in any manner whatsoever.

26. In the matter of **Chet Ram v. Jit Singh**⁷, the Supreme Court considered Rule 22(4) of the Department of Posts, Gramin Dak Sewak (Conduct and Employment) Rules, 2001 which contained prohibition against taking part in election to any legislative or local authority and held that since there is a specific prohibition in statutory rules against taking part in elections of legislative assembly or local authority, the candidate is disqualified from contesting in the election. It has been observed in paragraph 9 of the report as under: -

“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:

“22.(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.”

27. Since the election petitioner was specifically prohibited by sub-rule (4) of Rule 5 of the Rules of 1965 from taking part in election and the said

⁷ (2008) 14 SCC 427

rule is statutory in nature, the petitioner contested the election in direct conflict with specific prohibition contained in the above-stated rule applicable to her.

28. In view of the above-stated finding, the plea of termination advanced by learned counsel for the petitioner has no force and accordingly it is rejected. Similarly, the judgments cited by Mr. Manohar Lal Sharma, learned counsel, are clearly inapplicable and distinguishable to the facts of the present case.

29. Now, the question for consideration is, whether the election petitioner was disqualified for being chosen as Member of Legislative Assembly on account of her holding the office of profit under the Government of Chhattisgarh?

30. In order to adjudicate the plea, it would be appropriate to notice the provision contained in Article 191(1)(a) of the Constitution of India which states as under: -

“191. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;”

31. The principle contained in Article 191 of the Constitution of India is based on sound public policy of ensuing impartiality and neutrality in public service and avoidance of conflict between duty and interest of an elected member enabling him to carry-on his duties, freely and fearlessly without being subjected to any governmental pressure

thereby maintaining purity of legislature. The object of said provision, Article 191(1)(a) of the Constitution is to disqualify a person from membership of legislature, if he / she is obliged to the Government for an office which carries benefit or profit and thus, compromising his / her independence.

32. An 'office of profit' is an office which is capable of yielding a profit or pecuniary gain. In order to be an office of profit, the office must carry various pecuniary benefits or must be capable of yielding pecuniary benefits such as providing for official accommodation or even a chauffeur driven car. Holding an office under the Central or State Government to which some pay, salary emolument, remuneration or non-compensatory allowance are 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.

33. 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 monetary gain. If the 'pecuniary' gain is receivable in connection with the office, then it becomes an office of profit, irrespective of the fact 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. (See Jaya Bachchan v. Union of India⁸.)

34. The Supreme Court in the matter of Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa⁹ while taking into consideration its earlier

⁸ AIR 2006 SC 2119

⁹ 1971(3) SCC 870

decision in the matter of Ravanna Subanna v. G.S. Kaggeerappa¹⁰ laid down the tests for finding out whether an office in question is an office under a Government and whether it is an office of profit. It has been observed by their Lordships of the Supreme Court in Shivamurthy Swami Inamdar (supra) as under: -

“14. ... Therefore before the provisions of that Article can be attracted, it must be established that he was holding an office under the Union or the State Government and that that office was an office of profit and thereafter we must see whether the disqualification relating to that office has been removed by any Parliamentary legislation. In other words, the office in question must have been held under a Government and to that some pay, salary, emoluments or allowance is attached. The word 'profit' connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit—see *Revenna Subanna v. G. S. Kaggerappa* (AIR 1954 SC 653). This Court in several decisions has laid down the tests for finding out whether an office in question is an office under a Government and whether it is an office of profit. Those tests are : (1) Whether the Government makes the appointment; (2) Whether the Government has the right to remove or dismiss the holder; (3) Whether the Government pays the remuneration; (4) What are the functions of the holder? Does he perform them for the Government and (5) Does the Government exercise any control over the performance of those functions? see *Abdul Shakur v. Rikhab Chand*¹¹; *Ramappa v. Sangappa*¹²; and *Govinda Basu v. Sankari Prasad*¹³. ...”

35. Similarly, in the matter of Biharilal Dobray v. Roshan Lal Dobray¹⁴, the Supreme Court while considering the earlier decisions and highlighting the object of enacting Article 191(1)(a) of the Constitution of India, held in paragraph 5 as under: -

10 AIR 1954 SC 653

11 1958 SCR 387

12 1959 SCR 1167

13 (1964) 4 SCR 311

14 (1984) 1 SCC 551

“5. The object of enacting Article 191(1)(a) is plain. A person who is elected to a Legislature should be free to carry on his duties fearlessly without being subjected to any kind of governmental pressure. If such a person is holding an office which brings him remuneration and the Government has a voice in his continuance in that office, there is every likelihood of such person succumbing to the wishes of Government. Article 191(1)(a) is intended to eliminate the possibility of a conflict between duty and interest and to maintain the purity of the Legislatures. The term “office of profit under the Government” used in the above clause though indeterminate is an expression of wider import than a post held under the Government which is dealt with in Part XIV of the Constitution. For holding an office of profit under the Government a person need not be in the service of the Government and there need not be any relationship of master and servant between them. An office of profit involves two elements, namely, that there should be an office and that it should carry some remuneration. In order to determine whether a person holds an office of profit under the Government several tests are ordinarily applied such as whether the Government makes the appointment, whether the Government has the right to remove or dismiss the holder of the office, whether the Government pays the remuneration, whether the functions performed by the holder are carried on by him for the Government and whether the Government has control over the duties and functions of the holder. Whether an office in order to be characterised as an office of profit under the Government should satisfy all these tests or whether any one or more of them may be decisive of its true nature has been the subject matter of several cases decided by this Court but no decision appears to lay down conclusively the characteristics of an office of profit under the Government although the Court has no doubt determined in each case whether the particular office involved in it was such an office or not having regard to its features.”

36. Similarly, in the matter of Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev and another¹⁵, again the Supreme Court set-out some of the tests / principles for determining whether a person holds an office of profit under the Government and

15 (1992) 4 SCC 404

summarized the legal principles in paragraphs 11 and 18 as under: -

“11. On a careful examination of the ratio laid down in the above-mentioned cases some of the tests or principles that emerge for determining whether a person holds an office of profit under the Government, may be summarised thus:

“(1) The power of the Government to appoint a person in office or to revoke his appointment at its discretion. The mere control of the Government over the authority having the power to appoint, dismiss, or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the Legislature.

(2) The payment from out of the Government revenues are important factors in determining whether a person is holding an office of profit or not of the Government. Though payment from a source other than the Government revenue is not always a decisive factor.

(3) The incorporation of a body corporate and entrusting the functions to it by the Government may suggest that the statute intended it to be a statutory corporation independent of the Government. But it is not conclusive on the question whether it is really so independent. Sometimes, the form may be that of a body corporate independent of the Government, but in substance, it may just be the alter ego of the Government itself.

(4) The true test of determination of the said question depends upon the degree of control the Government has over it, the extent of control exercised by very other bodies or committees, and its composition, the degree of its dependence on the Government for its financial needs and the functional aspect, namely, whether the body is discharging any important Governmental function or just some function which is merely optional from the point of view of the Government.”

18. Articles 102(1)(a) and 191(1)(a) are incorporated in order to eliminate or reduce the risk of conflict between the duty and interest amongst the members of the Legislature and to ensure that the Legislature does not contain persons who have received benefits from the Executive and who consequently being under an obligation might be amenable to its influence. Therefore this object must be borne in

mind in interpreting these Articles. It is in this context the words "under the Government" so far as the present case is concerned, become more relevant and should be examined from that perspective keeping in view the necessary power to appoint or remove."

37. In the matter of Shibu Soren v. Dayanand Sahay and others¹⁶, the Supreme Court took under review the earlier decisions on the point and observed in paragraphs 24, 25, 26 and 27 as under: -

"24. In *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev*, (1992) 4 SCC 404, the appellant had been appointed as a single teacher in a primary school by the Project Officer of the Integrated Tribal Development Agency (ITDA). The High Court held that the appellant was holding an "office of profit" and had, thus, incurred a disqualification envisaged by Article 191(1)(a) of the Constitution. Setting aside the order of the High Court, and allowing the appeal it was held by this Court: SCC p. 428-29, para 29

"29. What emerges from the above discussion is that the Government has some control over the ITDA which is set up as a project, since it provides funds and sanctions the posts; the District Collector is appointed as Project Officer and some officers are ex officio members of the ITDA which carries out the object of providing compulsory education in tribal areas. But the ITDA is a registered society having its own constitution. *Though the Project Officer is the District Collector, he acts as a different entity. The power to appoint or to remove teachers is not with the Government but with the Project Officer. The Government may have control over the appointing authority but has no direct control over the teachers.* The small post that appellant holds in ITDA is only that of a teacher who is directly under the control of the Project Officer. In such a situation the question of any conflict between his duties and interests as an elected member does not arise since it cannot be said that he, as a teacher, can be subjected to any kind of pressure by the Government which has neither the power to appoint him nor to remove him from service. Taking a practical view of the substance of these factors into consideration, we are of the view that the appellant cannot be held to be holding an office

16 (2001) 7 SCC 425

of profit under the Government."

(emphasis supplied)

25. From a resume of precedents noticed above we find that in order to attract disqualification contained in Article 102(1)(a), a person must not only be holding "an office" but that office must be "an office of profit" and should be "under the Government" and should be an office other than an office declared by the competent legislature by law, not to disqualify its holder. The first question which comes to the fore, therefore is as to when can a person be said to be "holding an office of profit" under the Government.

26. The expression "office of profit" has not been defined either in the Constitution or in the Representation of the People Act. In common parlance, the expression "profit" connotes an idea of some pecuniary gain. If there is really some gain, its label – "honorarium" – "remuneration" – "salary" is not material – it is the substance and not the form which matters and even the quantum or amount of "pecuniary gain" is not relevant – what needs to be found out is whether the amount of money receivable by the person concerned in connection with the office he holds, gives to him some "pecuniary gain", other than as "compensation" to defray his out-of-pocket expenses, which may have the possibility to bring that person under the influence of the executive, which is conferring that benefit on him.

27. With a view to determine whether the office concerned is an "office of profit", the court must, however, take a realistic view. Taking a broad or general view, ignoring essential details is not desirable nor is it permissible to take a narrow view by which technicality may overtake reality. It is a rule of interpretation of statutes that the statutory provisions are so construed as to avoid absurdity and to further rather than defeat or frustrate the object of the enactment. Courts, therefore, while construing a statute avoid strict construction by construing the *entire* Act. (See with advantage *Ashok Kumar Bhattacharyya v. Ajoy Biswas*¹⁷, *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*¹⁸, and *CIT v. J.H. Gotla*¹⁹.)"

38. In **Jaya Bachchan** (supra), the Supreme Court has considered clause

17 (1985) 1 SCC 151

18 (1989) 3 SCC 709

19 (1985) 4 SCC 343

(1)(a) of Article 102 of the Constitution of India, which is *pari materia* to Article 191(1)(a) of the Constitution, and following the earlier decisions, held as under: -

“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*, AIR (1954) SC 653; *Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa*, (1971) 3 SCC 870; *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev*, (1992) 4 SCC 404 and *Shibu Soren v. Dayanand Sahay*, (2001) 7 SCC 425.”

39. In the matter of State Election Commissioner, Bihar, Patna and others v. Janakdhari Prasad and others²⁰, the Supreme Court has held that the nature of disqualification has to be strictly construed keeping in mind that right to contest an election is not a fundamental right but the said right may be curtailed under valid statutory provision.
40. Finally, in the matter of Narayan Dinbaji Jambhule v. Dr. Deorao Madguji Holi and others²¹, the Bombay High Court in facts similar to the case in hand held that respondent No.5 therein who was employed as Medical Officer, in Class-II, Group "A" Services and was in employment of State Government on the day on which he submitted nomination for Assembly Elections, held office of profit as contemplated by Article 191(1)(a) of the Constitution of India and thus, he stands disqualified to be chosen as member of Legislative Assembly as per Article 191(1)(a) of the Constitution and Section 100(1)a) of the Act of 1951 and quashed the election of the returned candidate (respondent No.5) holding that he was not qualified to be chosen as a member of Legislative Assembly.
41. Reverting to the facts of the present case in the light of the aforesaid legal proposition flowing from the decisions rendered by the Supreme Court and the Bombay High Court in Narayan Dinbaji Jambhule (supra), it is quite vivid that the election petitioner being Rural Health Officer (Female) and thereby a regular Government servant on the roll of the State Government on the date on which she submitted nomination paper for assembly election, and though on the date of submission of nomination paper, she was not actually working on account of her joining not being accepted by the competent authority,

20 (2018) 8 SCC 1

21 2017(2) Mh.L.J. 807

but she was admittedly, a Government servant who was entitled to draw, salary and allowances, as such, was holding the office of profit and therefore disqualified from being chosen as a member of Legislative Assembly and therefore the Returning Officer is justified in rejecting her nomination papers vide Exhibits P-6A & P-6B. The election petitioner has failed to demonstrate that her nomination papers were improperly rejected by the Returning Officer within the meaning of Section 100(1)(c) of the Act of 1951.

Relief and cost: -

42. As a fallout and consequence of the aforesaid discussion, the election petition deserves to be and is accordingly dismissed. In the facts and circumstances of the case, parties shall bear their own cost(s).
43. A copy of this order be sent to the State Election Commission forthwith as required by Section 103 of the Act of 1951.

Sd/-
(Sanjay K. Agrawal)
Election Judge