

JAIPAL SINGH
v.
SMT. SUMITRA MAHAJAN AND ANR.

APRIL 1, 2004

[V.N. KHARE, C.J. AND S.H. KAPADIA, J.]

Representation of the People Act, 1951; Ss. 3(1)(a) and 116-A/All India Services (Death-cum-Retirement benefits) Rules, 1958; Rule 16(2):

Election to Rajya Sabha/Parliament—Filing of nomination paper by a member of Indian Administrative Service after seeking voluntary retirement—Nomination paper rejected by Returning officer on the ground that since the notice period has not elapsed, he was holding office of profit—Election petition—Rejected by the High Court holding that the petitioner failed to disclose material facts—On appeal, Held: Election Petition is a matter of statutory right—It should contain concise statement of material facts for determination—Facts pertaining to holding of office of profit on the date of scrutiny of nomination paper, consideration of his application for voluntary retirement by the concerned authority and status of application for waiver of notice period being material facts within the knowledge of the petitioner, ought to have been disclosed by him—Hence, petition was rightly dismissed by the High Court—Constitution of India, 1950: Article 102(1)(c).

Words and Phrases:

'material facts' and 'material particulars'—Distinction between in the context of Representation of People Act, 1951—Discussed.

'voluntary retirement' and 'resignation'—Distinction between in the context of service jurisprudence—Discussed.

The questions which arose for consideration in this appeal were as to whether the election petition was lacking in material facts as required under Section 83(1)(a) of the Representation of the People Act, 1951 and as to whether the petition could have gone to trial.

It was contended by the appellant that he had disclosed all the material

- A facts regarding his voluntary retirement from service; that all the formalities concerning his retirement from service stood completed with the filing of application of voluntary retirement; that he had made a request to the appointing authority for waiver of the notice period; that granting of waiver of notice period or its consequences were questions of law do not require to be pleaded; and that relinquishment of the charge of the post was a disputed fact which ought to have been decided at the stage of trial.
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Dismissing the appeal, the Court

- C HELD: 1.1 An election petition is a matter of statutory right and the material fact has to be decided in the context of the election petition under the Representation of People Act. As to the question, whether the petitioner was holding office of profit on the date of scrutiny of the nomination paper, the petitioner ought to have answered that before filing the nomination paper he had requested for waiver of the notice period; that the appointing authority had received the notice on the specified date and that his request for waiver
- D stood granted on the date of scrutiny and he therefore ceased to be a Government servant. These were material facts within his knowledge and ought to have been pleaded in the election petition. 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. [689-G-H; 690-A]
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Sopan Sukdeo Scoble and Ors. v. Assistant Charity Commissioner and Ors., [2004] 2 Scle 82 and *Samant N. Balkrishna v. George Fernandez*, [1969] 8 SCC 238, referred to.

- F *Bruce v. Odhams Press Ltd.*, (1936) 1 KB 697, referred to.

- G 1.2. The basic distinction between 'voluntary retirement' and 'resignation' 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. In a given case, the appointing authority may refuse to waive the notice period which shows that resignation may be unilateral whereas
- H voluntary retirement is bilateral. In a case of retirement, there is a nexus

between retirement and retrial benefits. Hence, there is no merit in the argument that the acceptance of the application seeking voluntary retirement by the appointing authority was not required as there was no difference between "voluntary retirement" and "resignation". [690-D-G]

UCO Bank and Ors. v. Sanwar Mal, [2004] 4 SCC, referred to.

Reserve Bank of India and Anr. v. Cecil Dennis Solomon and Anr., (2004) 100 FLR 441, referred to.

Halsbury's laws of England, 4th Edition, Vol. 9 Page 133, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3749 of 2003.

From the Judgment and Order dated 30.1.2003 of the Punjab and Haryana High Court in E.P. No. 27 of 2002.

Dr. Rajeev Dhavan, Saurabh Aggarwal and Ms. Ruby Singh Ahuja for the Appellant.

P.H. Parekh, E.R. Kumar, Rohit Alex, Sanand Ramakrishnan, K.P. Singh and Varun Goswami for Respondent No. 2

R.C. Srivastava , D.P. Singh, Ms. Avneet, Manu Sharma and Sanjay Jain for Respondent No. 1

The Judgment of the Court was delivered by

KAPADIA, J. 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.

The appellant was a member of Indian Administrative Service having 40 years service to his credit and who was 59½ 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

A 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,

B the Returning Officer rejected the nomination papers of the appellant on the ground that rule 16 of the 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

C 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 59½ 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

D 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

E 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

F 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 Rules to relax the condition and to waive the notice period 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

G members of the Rajya Sabha from the State of Haryana. In the light of the

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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 the 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 objection 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 facts 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.

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.

Dr. Rajeev Dhavan, learned senior counsel appearing on behalf of the appellant submitted that in service jurisprudence, the effect or "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 or 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

- A 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 waiver of notice period did not effect 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,
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- C 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.

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

- D 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.

- E (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth 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
- F (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.”

- G 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 Ors. v. Assistant Charity Commissioner and Ors.*, reported in (2004) 2 Scale 82 it has been held that Order VI Rule 2(1) of CPC deals with
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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 fact 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 v. Odhams Press Ltd.*, (1936) 1 KB 697 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 v. Philipps*, (1872) 4 QBD 127: 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 claims - 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 to 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.”

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 v. George Fernandez*, [1969] 3 SCC 238.

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 that 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 on 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

A 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.

B We also do not find any merit in 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. v. Cecil Dennis Solomon and Anr.*, reported in (2004) 100 FLR 441, this Court has 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 distinctions 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 Laws of England, 4th Edition Vol. 9 Page 133]. 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 Ors. v. 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.

H 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.

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

S.K.S.

Appeal dismissed.