SITARAM JIVYABHAI GAVALI

v.

RAMJIBHAI PETIYABHAI MAHALA & ORS.

MARCH 25, 1987

[E.S. VENKATARAMIAH AND M.P. THAKKAR, JJ.]

Constitution of India, 1950, Article 102(1)(a) Disqualifications for Membership of either House of Parliament—Appellant a temporary Government servant tenders his resignation along with a month's salary as per clause 6 of his appointment order hands over the official records in his possession, and files the nomination, explaining everything in the covering letter to the Returning Officer—Whether the appellant could be said to hold an "office of profit under the Government" on the date of filing the nomination—Doctrine of Relation Forward, applicability of—Deemed date of resignation, what is—Whether Rule 5(1)(a) of the Central Civil Services (Temporary Services) Rules, 1965, scope.

The appellant who belonged to Scheduled Tribe covered by the Schedule to the Constitution (Dadra and Nagar Haveli) Schedule Tribes Order, 1962, decided to contest the 1984 election from the Dadra and Nagar Haveli Parliamentary Constitutency which was a constitutency reserved for the members belonging to the Scheduled Tribes. As he was holding the post of an Investigator as a temporary Government servant governed by the Central Civil Services (Temporary Services) Rules, 1965 and also by condition 6 of his appointment order, he wrote a letter on November 21, 1984 to the Collector of Dadra and Nagar Haveli, who was his appointing authority, tendering his resignation and enclosing a demand draft drawn on the State Bank of India for a sum of Rs.1024.05 paise, being one month's notice pay. On 24.11.1984 at 10 A.M. he wrote another letter to his immediate officer and submitted all the records and files which were with him. He, thereafter, filed his nomination paper on the same day i.e. two days before the last date for filing the nomination papers. On 26.11.84, he wrote a letter to the Returning Officer, bringing to his notice each and every fact leading to his resignation and requesting the Returning Officer to note his contention that he ceased to be a government servant with effect from 21.11.84, while scrutinising the nomination paper.

On the same date he received a reply from the office of the Administrator Dadra and Haveli to the effect that his resignation would take effect from 21.12.84 on the expiry of one month's notice and that

A his remitting one month's notice pay was not contemplated under Rule 5(1)(a) of the Central Civil Services (Temporary Services) Rules, 1965, as per the legal opinion obtained. On 27.11.84, the appellant sent a reply bringing to the Administrator's notice condition No. 6 of his appointment order and also cases of six other officers whose resignations were accepted forthwith accepting one month's notice pay from
B them. The appellant also alleged malafides and pressure by Respondent No. 1, the then sitting member of the Parliament on the Collector. In reply to the said letter, the Development and Planning Officer by his letter dated 21.12.84 reiterated the Administrator's stand and returned the demand draft.

C In the meanwhile on 28.11.84, i.e. the date of scrutiny of the nomination papers, the Returning Officer overruled the objection raised by Respondent No. 1 that since the appellant was holding an office of profit under the Government he was disqualified to contest the election.

D In the said election, the appellant secured the highest number of votes and he was declared elected. The election petition filed by Respondent No. 1 was allowed and the appellant's election was declared null and void. The appeal preferred by the appellant under section 116 of the Representation of People Act, 1951 was remitted to the High Court for amendment of written statement, framing of fresh issues and
E further findings of the High Court on them. All the four additional issues framed were answered against the appellant and thereafter, the said appeal was set for further hearing.

Allowing the appeal, the Court,

F HELD: 1. The letter of resignation dated November 21, 1984 cannot be treated as one submitted under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. The proviso to Rule 5(1) authorises only the appointing authority to terminate the temporary service of the Government servant forthwith and that on such termination the Government servant becomes entitled to claim a sum equivalent
G to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his service, or as the case may be for the period by which such notice falls short of one month. There is no provision in the CCS Temporary Service Rules which authorises a Government servant to bring about the termination of his temporary service as provided in
H Rule 5(1) by paying a sum equivalent to the amount of his pay and

allowances of the period of notice at the same rates at which he was drawing them immediately before termination of his service or as the case may be for the period by which notice falls short of one month. If the letter of resignation was truly one which had been submitted under Rule 5(1) of the CCS Temporary Service Rules which did not envision tendering of one month's salary by the employee, there was no necessity to tender a demand draft for Rs.1024.05. Such payment was contemplated only when the resignation was under condition No. 6 of the letter of appointment issued in favour of the appellant about which the appointing authority could not have been unaware. If the concerned authority had not realised that it was a resignation pursuant to such conditions the said authority would have returned (instead of retaining) the demand draft at once or at the earliest. [654D; G-H; 655A-E]

1.2 The letter of resignation of the appellant was one which was submitted pursuant to Condition No. 6 of his letter of appointment which was one more method adopted and accepted by the Administration to bring about the termination of service of a temporary government servant. The said condition was only supplementary to the modes of termination of temporary service, referred to in Rule 5(1) of the CCS Temporary Service Rules and it was not in any way inconsistent with the said Rules. As a matter of fact it was not even suggested or faintly hinted in the High Court that there was any such inconsistency. [656B-C]

1.3. It is well recognised that a new service condition may be brought into effect by an executive order and such condition would remain in force as long as it is not repealed either expressly or by necessary implication by another executive order or a rule made under the proviso of Article 309 of the Constitution of India or by a statute. In the facts and circumstances of the case, the material produced in the Court and in the absence of any inconsistency between condition No. 6 and any other order, rule, or law the letter of resignation is one submitted pursuant to condition No. 6 in the letter of appointment issued in the case of the appellant. [656C-E]

2.1 There has been full compliance with condition No. 6 of the letter of appointment as a demand draft was enclosed being a month's notice pay and allowances. [656E-F]

2.2 The resignation contemplated under Condition No. 6 is not the same as the letter of resignation which may be submitted by a government servant on the acceptance of which he ceases to be a government servant. In the case of an ordinary resignation which is

A governed by the Memorandum No. 39/6/57-Ests. (A) Ministry of Home Affairs dated 6th May, 1958 no question of paying a month's salary or allowance to the Government would arise. In the absence of any rule or executive order prescribing the method or manner in which a temporary government servant of the rank of an investigator could be relieved from service under Condition No. 6 of the letter of appointment B or any evidence adduced as to what practice had been in vogue as regards relieving such a person, it must be held that it is implicit in such a condition that the nature of his employment is such that he can be relieved forthwith without the need for waiting for a month and that he would be so relieved as was indeed done in the case of others governed by such a condition. [657A-C]

C

2.3 The appellant should be deemed to have been relieved from his service at 10.00 A.M. on 24.11.1984 and he had ceased to be a Government servant before he submitted his nomination paper on 24.11.1984. At 10.00 A.M. on 24.11.1984, before the appellant submitted his nomination paper to the Returning Officer, he had handed over D all the records, registers, files etc. which were with him to the head of his office along with a letter, a copy of which was submitted to the Collector, who was the appointing authority. This cannot be termed as an unilateral act of the appellant. There was no refusal to accept the records. There was no order to report for duty and discharge any functions. The appellant had not, in fact, been paid any salary or allo- E wance for the period subsequent to 20.11.84, that is, the date previous to the date of the letter of resignation. He had not attended and he was not required to attend his office from 21.11.84 except for handing over the records, files, registers etc. on 24.11.84. The appellant was not asked by the Collector to attend the office till 21.12.84 nor grievance was made against him for his absence in the wake of his resignation. F There was no disciplinary proceeding or any other kind of enquiry pending against the appellant which required the appointing authority not to relieve the appellant from his service in the public interest. And there was no objection raised as a matter of fact on any ground to his being trated as having ceased to be in service eventually till the expiry of one month from the date of his service. It is not as if for administrative G reasons his resignation was not acceptable for any reason. [657C-F]

3. The Returning Officer had rightly overruled the objection and accepted his nomination paper. It is not established by the election petitioner on whom the onus rested that the returned candidate held an office of profit on the date of scrutiny or that his nomination paper was H wrongly accepted by the Returning Officer. He cannot therefore suc-

cessfully assail the election of the returned candidate, the appellant herein. [657G-H] A

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1632 of 1985.

From the Judgment and Order dated 2.4.1985 of the Bombay High Court in Election Petition No. 1 of 1985. B

Ram Jethmalani, Kapil Sibbal, Karanjawala, Mrs. R. Karanjawala, Ejaz Mazbool and Ms. Priya Jaitley for the Appellant.

T.S. Krishnamurthy Iyer, S.D. Lal and H.K. Puri for the Respondents. C

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The appellant is a person belonging to a Scheduled Tribe. At the last General Election held to the Lok Sabha D he was declared duly elected from the Dadra and Nagar Haveli Parliamentary Constituency by a substantial majority. After the declaration of the result of the election the Ist Respondent, who was one of the defeated candidates, filed an election petition in Election Petition No. 1 of 1985 on the file of the High Court of Bombay calling in question the result of the election on the ground that the appellant was E disqualified to be chosen as a member of the Lok Sabha on the date of the scrutiny of the nomination papers, because he held an office of profit under the Government other than an office declared by Parliament by law not to disqualify its holder. The High Court accepted the contention of the Ist Respondent and set aside the election of the appellant by its judgment dated April 2, 1985. This appeal is filed F under section 116-A of the Representation of People Act, 1951 (hereinafter referred to as 'the Act') against the judgment of the High Court.

The facts of the case may be summarised thus. The Ist Respondent was a member of the last Lok Sabha. On 13.11.1984 elections to G the present Lok Sabha were announced. The appellant, who was holding the post of an Investigator as a temporary Government servant in the Union territory of Dadra and Nagar Haveli, decided to contest the election from the Dadra and Nagar Haveli Parliamentary Constituency, which was a constituency reserved for the members belonging to the Scheduled Tribes. He had been appointed on 2.5.1979 as a H

Junior Clerk on a temporary basis in the Administration of Dadra and Nagar Haveli. His appointment was subject to the conditions mentioned in the order of appointment and amongst the said conditions there were the following three conditions:

> "1. He will be governed by the Central Civil Services Rules.
>
> 2. The appointment is purely on temporary basis and is liable to be terminated at *ONE* month's notice.
>
> 3. .....
>
> 4. .....
>
> 5. .....
>
> 6. Before resigning the post, he shall have to give one month's notice to the Administration failing which he shall have to remit one month's notice pay before he could be relieved from service.
>
> .....

The above order of appointment was issued by the Collector of the Union territory of Dadra and Nagar Haveli, Silvasa. The relevant Central Civil Services Rules which governed the appellant were the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as ('the CCS Temporary Service Rules'). Rule 5(1) of the said Rules, which dealt with the termination of temporary service, read as follows:

> "5(1)(a) Termination of Temporary Service—The service of temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to Government servant.
>
> (b) The period of such notice shall be one month.
>
> Provided that the service of any such Government servant may be terminated forthwith and on such termination the

Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be for the period by which such notice falls short of one month."

The last date for filing the nomination was 27.11.1984 and the date of scrutiny of the nomination papers was 28.11.1984. The appellant, who was then working as an Investigator attached to the office of the Development and Planning Officer, Dadra and Nagar Haveli, Silvasa, wrote a letter on November 21, 1984 to the Collector of Dadra and Nagar Haveli, who was the appointing authority, tendering his resignation. The said letter read as follows:

"From:

Shri Sitaram J. Gavali,
Investigator,
Office of the Development &
Planning Officer,
Dadra and Nagar Haveli,
Silvasa.

Silvasa,
November 21, 1984.

To

The Hon. Collector,
Dadra and Nagar Haveli,
Silvasa.

Respected Sir,

As I intend to contest the forthcoming Parliament Election from Dadra and Nagar Haveli Parliamentary (Constituency), I the undersigned hereby give up my post of Investigator which I am holding as temporary Government servant forthwith. As I am giving up my post forthwith I hereby tender my pay plus allowances of one month vide Demand Draft No. C-199981 from State Bank of India, Silvassa Branch dated 21.11.1984 of Rs.1024.05 (Rupees One Thousand Twenty four and paise five only) in

favour of Development and Planning Officer, Dadra and Nagar Haveli, Silvasa. Hence I cease to be a temporary Government servant from today only. This letter of giving up my post as temporary Government servant is covered by Rule 5(1)(a) of CCS Temporary Service Rules.

Yours faithfully,
Sd/-
(S.J. GAVALI)
Investigator"

The said letter was submitted through the Development & Planning Officer, Dadra and Nagar Haveli, Silvasa. Along with the said letter of resignation, as mentioned therein, he sent a demand draft drawn on the State Bank of India for a sum of Rs.1024.05 paise which he was drawing as monthly pay plus allowances of the post he held immediately before that date. Since he did not get any reply from the Collector to his letter of resignation, on 23.11.1984 he met the Collector and also the Secretary to the Administrator of Dadra and Nagar Haveli who was the returning officer of the said election. Then on 24.11.1984 he wrote a letter to the Development & Planning Officer, Dadra and Nagar Haveli, Silvasa which reads thus:

"From:

Shri Sitaram J. Gavali,
Silvasa.

Dt. 24.11.1984

To

The Development & Planning
Officer,
Dadra and Nagar Haveli,
Silvasa.

Sir,

I have already submitted my application dated 21.11.1984 to the Hon. Collector through the Development and Planning Officer to relieve me from my post with

immediate effect and as per the law, I also tendered a sum of Rs. 1024.05 by Demand Draft in favour of the Development & Planning Officer in lieu of one month notice. In view of the said provisions, I ceased to be a Government servant from that date. I had also requested on the same day to take the files and other records of the post held by me. It has been informed by you that the said files and records will be taken only after getting orders of the Collector.

On the 23.11.1984, I met the Hon. Collector and Secretary to the Administrator twice who have informed me that you (myself) are now no more a Government servant. As per application dated 21.11.1984, I ceased to be a Government servant from that date i.e. 21.11.1984. Under the circumstances, I submit herewith all files and other records along with all registers may kindly be taken in your possession so that in future I am eligible to file my nomination for Lok Sabha Election for Dadra and Nagar Haveli Parliamentary Constituency before the Returning Officer. I submit the above mentioned document today, i.e. 24.11.84 at 10.00 hrs. Kindly acknowledge the receipt of the same.

Thanking you,

Yours faithfully,
Sd/-
(S.J. Gavali)"

Submitted a copy of the above letter to the Collector, Dadra and Nagar Haveli also. The said letter referred to the fact that the appellant had met the Collector and also the Secretary of the Administrator on 23.11.1984 and that he had informed the Collector that he was no longer a Government servant. Along with the said letter he handed over all the files, records and registers etc. which were with him along with a list thereof to the head of his office, that is, the Development & Planning Officer. He thereafter filed his nomination paper on 24.11.1984. He also filed an additional nomination paper on 26.11.1984. Since the appellant did not get any written reply from the Collector to the above letter of 24.11.1984 till 26.11.1984 he wrote another letter on 26.11.1984 to the Returning Officer, Dadra and

A Nagar Haveli Constituency, Silvasa, who was also the Secretary to the Administrator, which read thus:

"From:
Shri Sitaram J. Gavali,
Silvasa.

B

Dt. 26.11.1984

To
The Returning Officer,
Dadra and Nagar Haveli,
Silvasa.

C

Respected Sir,

I had been working as temporary Government servant with the designation as 'Investigator' under the Nagar Haveli Administration. The terms of my service are regulated by the 'Central Civil Services (Temporary Service) Rules, 1965'. When Lok Sabha elections were declard on 13.11.1984, I took decision to contest the same. Dadra and Nagar Haveli is reserved constituency for Scheduled Tribes. I belong to the Kokna Tribe which is a declared Scheduled Tribe covered by the Schedule to the 'Constitution (Dadra and Nagar Haveli) Schedule Tribes Order, 1962.'

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Since I intend to contest the election, I have given up my post of Investigator from 21.11.1984, under Rule 5(1)(a) of the C.C.S. Temporary Service Rules, 1965, my service can be terminated by me by giving a notice in writing to the appointing authority. Accordingly I have addressed a letter dated 21.11.1984 to the Collector, Dadra and Nagar Haveli informing him that I have given up my post of Investigator, and I cease to be a Temporary Govt. servant from the date of the letter. I say that under Rule 5 of the C.C.S. Rules, I am only required to give one month's notice and no further act is required to be done for termination of my services. In particular the same notice is neither to be replied to or even considered by the appointing authority. The said notice under Rule (1) has been given by me on 21.11.1984 a copy of the same is hereto annexed and marked Annexure A. I say that the said letter was received by the Collector's office on 21.11.1984 itself. That thereafter on 23.11.1984 one express Telegram has

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G

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been sent by me to the Administrator, Dadra and Nagar Haveli informing him that I have given up my service as temporary servant on 21.11.1984. A copy of that telegram is hereto annexed as Annexure B. I say that I have ceased to be a Govt. servant on 21.11.1984 when I have given one month's notice pay. In any case there can be no doubt my services will come to end by operation of statute after the period of one month, that is, say on 20.12.1984. Thus I will not be holding any office of profit with the Govt. of India on 24.12.1984 which is the declared date of election in Dadra and Nagar Haveli. Under the circumstances, I will have no disqualification for being chosen as a Member of Parliament on 24.12.1984 as contemplated by Article 102 of the Constitution of India. I am addressing this letter to you out of abundant caution as I fear that the sitting member of Parliament Mr. Ramji Pitia Mahala, who is a close friend of the Collector, Dadra and Nagar Haveli has improperly prevailed over the Collector, Dadra and Nagar Haveli to sleep over my letter dated 21.11.1984 and may take up the wrong contention that I will be holding an office of profit with the Central Govt. I once again state that without prejudice to my contention that I have ceased to be a Govt. servant on 21.11.1984 itself, in any case I shall cease to be one on 20.12.1984. This position cannot be in dispute in view of the absolutely clear position of Rule 5 of the C.C.S. Rules, 1965. For the sake of convenience the relevant portion of the said Rules and Article 102 of the constitution of India is reproduced in an annexure marked Annexure C.

I pray that the aforesaid contention may be borne in mind when my nomination papers are scrutinised on 28.11.1984.

Yours faithfully,
(SITARAM J. GAVALI)"

Copies of the above letter were sent by the appellant to the Administrator, Dadra and Nagar Haveli, Cabo Niwas, Panjim, Goa, Election Commission of India, Chief Electoral Officer, Dadra and Nagar Haveli and to SC/ST Commissioner for information and necessary action. On the same date he received a reply from the office of the

Administrator, Dadra and Nagar Haveli which read as follows:

"No. ADM/SECT/MISC/SJG/84
Administration of
Dadra and Nagar Haveli,
Silvasa, date 26.11.1984.

To

Shri Sitaram J. Gavali,
Investigator,
(Through the D.P.O.)
Dadra and Nagar Haveli,
Silvasa.

I am directed to refer to your letter dated 21.11.1984, addressed to Collector, under which you had issued notice under Rule 5(1)(a) of CCS Temporary Service Rules and stated that you are giving up your post forthwith and had tendered pay and allowance of one month. In this connection I am directed to inform you that the said notice was examined in the Administration. Necessary legal opinion was also obtained. The case was also referred to the Goverment of India, in the Ministry of Home Affairs, through Crash Wireless Message dated 23.11.1984. As per Government of India's decision, your notice of termination of service takes effect on the expiry of the prescribed period of one month. There is no provision under Rule 5(1) of the CCS Temporary Service Rules under which a Government servant can deposit one month's pay in lieu of the purchase of period of notice. Hence as per Rule 5(1) of the CCS Temporary Service Rules quoted by you, the notice of termination of your service will take effect only after the expiry of one month from the date of submission of notice.

Sd/-
(S.S. Kolvekar)
Governor to the Administrator
Dadra and Nagar Haveli,
Silvasa"

The above letter stated that the Ministry of Home Affairs, Government of India had been contacted by the Collector in connection with the letter of resignation submitted by the appellant on 21.11.1984 and

necessary legal opinion had been obtained thereon. The said letter, however, informed him that there was no provision under Rule 5(1) of the CCS Temporary Service Rules under which a temporary Government servant could deposit one month's pay in lieu of the period of notice issued under Rule 5(1) of the said Rules and that the notice of termination of service issued by the appellant would, therefore, take effect only upon the expiry of one month from the date of the receipt of the notice. In other words, the said letter stated that the appellant would continue to be a temporary Government servant till 21.12.1984. In reply of the said letter, the appellant wrote a letter dated 27.11.1984 to the Secretary to the Administrator, Dadra and Nagar Haveli which read thus:

"From:

Sitaram Jivyabhai Gavali,
Silvasa.

27.11.1984

To

Secretary to the Administrator,
Dadra and Nagar Haveli,
Silvasa

Subject: Lok Sabha Election matter.

Sir,

I the undersigned Shri S.J. Gavali beg to state as under:

1. I have received your letter No. ADM/Secy/Misc/SJG/84 dated 26.11.1984. I have been informed by you that the notice of termination of my services will take effect only after the expiry of one month from the date of submission of notice. In this connection, I am to state that I had been appointed as Jr. Clerk vide Administration Order No. ADM/EST/C/RCC/1466/1979 dated 2.8.79. The said appointment is subject to the conditions fixed by the administration.

As per the condition No. 2 the appointment is purely on temporary basis and is liable to be terminated at one month's notice and as per the condition No. 6 before resigning the post, I have to give one month's notice to the Administration, failing which I have to remit one month's pay before I can be relieved from service.

I have been promoted as Investigator by the Administration and my service conditions were continued.

2. I intended to contest the forthcoming Parliament election from this area and therefore, I gave up my post and paid my one month notice pay on 21.11.1984 and tendered my notice by the said letter giving up my post as temporary Govt. servant. I have also submitted detailed representation to the Returning Officer, Dadra and Nagar Haveli, Silvasa on 25.11.1984. I have already given my charge to the Development and Planning Officer, Dadra and Nagar Haveli, Silvasa vide my letter dated 24.11.1984.

3. I am not holding any office of profit with the Govt. of India from 21.11.1984. I have tendered notice with immediate effect and also deposited one month's pay in lieu of notice as per the terms and conditions of my appointment. I have already given my charge. My notice became effective from that very day and does not require any formal acceptance as per rules. Under the above circumstances for being chosen as a Member of Parliament.

4. Incidentally I would like to draw your kind attention that Administration has considered many cases, and accepted the resignation with immediate effect, when the Govt. servants have tendered their resignation with one month's pay as per the terms and conditions of their appointment orders.

5. The resignations of the following persons were accepted with immediate effect by the Collector, Dadra and Nagar Haveli, Silvasa. The said persons had paid one month notice pay.

Name	Date of acceptance of resignation.
Shri J.V. Desai Stockman, Khanvel	12.4.78
Shri C.V. Patel, Stockman	31.1.1983
Shri A.H. Patel, Primary School Teacher	30.8.84
Shri D.G. Shah, High School Teacher	.....
Shri R.G. Chauhan, - Primay School Teacher	.7.1984
Shri J.D. Patel, Lineman, P.W.D., Silvasa.	.10.1984

(He was relieved on same day)

The Administration should take equal decision for all employees. But different decision taken for me is against law, equity and justice.

6. I am addressing this letter to you out of abundant caution as I fear that the sitting member of Parliament Mr. R.P. Mahala who is close friend of the present Collector has improperly prevailed over the Collector to sleep over my letter dated 21.11.1984 and taken wrong contention.

7. The reply given by your office vide letter No. ADM/ Secy/Misc/SJC/84 dated 26.11.1984 is not as per law and against the relevant rules and regulations and terms of my appointment order.

8. My right to contest the election should not be deprived. I, therefore, request you to kindly look into the matter personally and give me justice properly.

I am quite eligible to contest the election. I have explained clear position to you. I therefore request you to do

A the needful in the interest of natural justice and protect the right of citizen. If you take any adverse action for my election activities, I shall take all legal actions as per the circumstances of my case would warrant against you with your costs and consequences, which please note.

B Yours faithfully,
Sd/-
(S.J. Gavali)"

In the above letter, the appellant, specifically drew the attention of the Administration to Condition No. 6 in his letter of appointment C which authorised him to resign his service on remitting 'one month's notice pay'. He pleaded in the said letter that since he had remitted 'one month's notice pay' and also handed over the charge by delivering all the files, registers records etc. which were with him on 24.11.1984 he had ceased to be a Government servant. He also mentioned in the said letter that earlier the Collector had accepted the resignations of D six temporary Government servants on payment of 'one month's notice pay'. In reply to the above letter he got a reply from the Development and Planning Officer, Dadra and Nagar Haveli, Silvasa on December 21, 1984 along with the demand draft for Rs.1024.05 paise which had been deposited by the appellant on 21.11.1984. The said letter read thus:

E

"Administration of
Dadra and Nagar Haveli, U.T.
(Department of Rural Development)
No. DPO/EST/EF-SJG/84-85/2153
Silvasa, 21.12.1984.

F

To

Shri Sitaram J. Gavali,
Investigator,
Dadra and Nagar Haveli,
G At and Post: Khanval.

Sir,

I am directed to refer to this Administration's letter
H No. ADH/SECY/MISC/SJC/84 dated 26.11.84 and as mentioned therein, your notice of termination of services

takes effect on the expiry of the prescribed period of one month. There is no provision under Rule 5(1) of the CCS (Temporary Services) Rules, 1965, under which the Government servant can deposit one month's pay in lieu of the prescribed period of notice.

Under the circumstances, the demand draft of the State Bank of India, Silvasa Branch bearing No. C-199981 dated 21.11.1984 of Rs.1024.05 received alongwith your application dated 21.11.1984 is returned herewith.

Kindly acknowledge the receipt for the same.

Yours faithfully,
Sd/-

Development and Planning Officer
Dadra and Nagar Haveli,
Silvasa."

In the meanwhile on 28.11.1984, i.e., the date of scrutiny of the nomination papers, the Returning Officer passed the following order overruling the objection which had been raised by the Ist Respondent to the nomination of the appellant:

"I have examined this nomination paper in accordance with section 36 of the Representation of the People Act, 1955, and decide as follows:

An objection was raised during scrutiny of this nomination paper, by the authorised person of the candidate Shri Mahala Ramjibhai Potiabhai, that Shri Gavali Sitaram Jivyabhai is holding as on today, an office of profit under the Administration of Dadra and Nagar Haveli and hence he is disqualified to be a Member of House of People in accordance with Article 102 of the Constitution of India. A summary enquiry was held on this objection and both the sides were heard. On the basis of arguments advanced and evidence adduced before me I have a doubt as to whether Shri Gavali Sitaram Jivyabhai holds an office of profit as on today, under the Administration of Dadra and Nagar

Haveli. Hence I decide to give the benefit of this doubt to the candidate and accept this nomination.

Sd/-
28.11.1984
Returning Officer
Dadra and Nagar Haveli, Silvasa

Accordingly, the nomination papers of the appellant were accepted and since there was a contest, the poll took place on the appointed day. At the said election, the appellant secured the highest number of votes and he was declared as elected. As mentioned earlier, the Ist Respondent filed the election petition before the High Court. At the conclusion of the trial, the learned Judge, who heard the election petition, having noticed the presence of Condition No. 6 in the letter of appointment issued to the appellant which enabled the appellant to resign from his post by tendering one month's pay plus allowances, held that the letter of resignation was one which had been served on the Government under Rule 5(1)(a) of the CCS Temporary Rules and was not one under Condition No. 6 of the letter of appointment. He further held that even assuming that the letter of resignation had been submitted pursuant to Condition No. 6 of the letter of appointment, the resignation did not take effect, since the appellant had not been 'relieved from the service' as required by Condition No. 6 of the letter of appointment before the date of scrutiny. He further held that the submission of files, records, papers etc. by the appellant did not mean that he had been 'relieved from service' as it was his unilateral act. Accordingly, the learned Judge came to the conclusion that the resignation did not take effect till the expiry of one month from the date of the letter of termination, i.e, till the expiry of December 21, 1984 and consequently the appellant was holding an office of profit on the date of scrutiny of the nomination paper. The learned Judge held that the holding of the said office of profit amounted to a disqualification under clause (a) of Article 102(1) of the Constitution of India. In the result the election petition filed against the appellant was allowed and the election of the appellant was declared as void under section 98 of the Act.

The above appeal came up for hearing before this Court in March 1986. On that occasion, after hearing the learned counsel for both the parties, this Court passed an order dated March 11, 1986 remitting the case to the High Court under Order 41 Rule 25 of the Code of Civil Procedure. The said order reads thus:

"On hearing counsel and on going through the judgment of the High Court and the application for amendment of the Written Statement now filed by the appellant (the returned candidate who has been unseated) before us we feel that the amendment prayed for should be allowed. The matter will have to go back to the High Court for this limited purpose with a direction to record and forward to this Court its findings on the issues that may arise in the light of the amended Written Statement and the additional pleadings if any that may be filed by the election petitioner in the election petition. We, therefore, in the interests of justice allow the amendment of the Written Statement as prayed and direct the High Court to try issues arising out of the amended part of the Written Statement and additional pleadings, if any, to be filed by the petitioner as per Order 41 Rule 25 CPC. We further direct the High Court to forward its findings to this Court on or before 31st August, 1986. The parties will be at liberty to adduce additional evidence if they so desire. Upon the findings being recorded by the High Court the parties are directed to file their objections to the findings submitted by the High Court on or before 15th of September, 1986. This case may be posted in the 3rd week of September for further hearing. The original record may be sent back to the High Court alongwith a copy of this order within one week from today."

After the above order was passed the written statement of the appellant before the High Court was amended and additional issues were framed. After recording the evidence adduced by the parties and hearing the parties, the High Court recorded its findings on the additional issues framed in the election petition and submitted them to this Court. The additional issues that were framed pursuant to the order passed by this Court were these:

"1. Whether the acceptance of the files and records in the possession of the Ist respondent by the Development and Planning Officer, Dadra and Nagar Haveli, amounted to acceptance by conduct of the Ist respondent's resignation, as alleged in paragraph 5A of the statement of Defence?

2. Whether the absence of any negative response by 28th November, 1984 to the Ist respondent's letter dated 25th

November, 1984 submitted to the office of the Collector of Dadra and Nagar Haveli amounted to acceptance by conduct by the Collector of the Ist respondent's resignation, as alleged in the aforesaid paragraph?

3. Whether acceptance of the Ist respondent's application made after 21st November, 1984 relates back to the date of the application as alleged in the aforesaid paragraph?

4. Whether the Collector, by not passing any orders on the application, is deemed to have accepted the resignation, as alleged in the aforesaid paragraph?"

The learned Judge answered all the above issues in the negative and against the appellant. The appeal was taken up for hearing again after the receipt of the records from the High Court.

The first question which arises for consideration in this case is whether the letter of resignation dated November 21, 1984 should be treated as one submitted under Rule 5(1) of the CCS Temporary Service Rules. It is true that in the letter of resignation the appellant states that 'this letter of giving up my post as temporary Government servant is covered by Rule 5(1)(a) of the CCS Temporary Service Rules' and that there is no specific reference to Condition No. 6 of the letter of appointment which authorised the appellant to resign from his post by remitting one month's pay plus allowance to the Government. Still in the circumstances of the case we feel that the finding of the learned Judge of the High Court that it could be treated only as letter of resignation under Rule 5(1)(a) of the CCS Temporary Service Rules is unsustainable. Clause (a) of Rule 5(1) of the CCS Temporary Service Rules authorises the termination of temporary service of a Government servant (who is not a quasi-permanent servant) at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant. Clause (b) of Rule 5(1) of the CCS Temporary Service Rules prescribes the period of such notice as one month. The proviso to Rule 5(1), however, authorises the appointing authority and not the Government servant to terminate the temporary service of the Government servant forthwith and that on such termination the Government servant becomes entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his service, or as the case may be for the period by

which such notice falls short of one month. There is no provision in the CCS Temporary Service Rules which authorises a Government servant to bring about the termination of his temporary service as provided in Rule 5(1) by paying a sum equivalent to the amount of his pay and allowances of the period of notice at the same rates at which he was drawing them immediately before termination of his service or as the case may be for the period by which notice falls short of one month. But it needs to be emphasized that in his letter of resignation the appellant had clearly conveyed that he was giving up the post held by him forthwith and he was tendering along with the said letter a demand draft drawn on the State Bank of India, Silvasa Branch for a sum of Rs.1024.05 paisa. He also stated in the said letter that he would cease to be a temporary Government servant from that date. If the letter of resignation was truly one which had been submitted under Rule 5(1) of the CCS Temporary Service Rules which did not envision tendering of one month's salary by the employee, there was no necessity to tender a demand draft for Rs.1024.05 paise. Such payment was contemplated only when the resignation was under Condition No. 6 of the letter of appointment issued in favour of the appellant about which the appointing authority could not have been unaware. If the concerned authority had not realized that it was a resignation pursuant to such condition the said authority would have returned (instead of retaining) the demand draft at once or at the earliest. That he did not do so tells its own tale. The existence of Condition No. 6 in the letter of appointment is not in dispute. The appellant had drawn the attention of the Administration of the Dadra and Nagar Haveli to the acceptance of resignations of six officials who were similarly placed forthwith by the Administration on payment of one month's pay plus allowances. It may also be noted that in his letter dated 27.11.1984 the appellant had clearly stated in terms that the letter of resignation had been submitted in pursuance of Condition No. 6 of his letter of appointment. The correctness of the statement in the deposition of the Planning and Development Officer, who was examined after remand that a letter dated 24.11.1984 as per the original or Additional Ex. D 2 had been sent to the appellant informing the appellant that his letter of resignation was under consideration, is in dispute. The appellant has denied the receipt of the same. There is no evidence supporting the service of that letter on the appellant. This circumstance cannot, therefore, be treated as having been established. We, therefore, do not agree with the finding of the learned Judge of the High Court that the letter of resignation submitted by the appellant on 21.11.1984 was one submitted under Rule 5(1) of the CCS Temporary Service Rules. It is further seen that the Administration has withdrawn by a specific order subse-

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quently the condition which authorised a temporary Government servant to resign from his post forthwith by tendering a month's pay plus allowances. The letter of resignation of the appellant was one which was submitted pursuant to Condition No. 6 of his letter of appointment which was one more method adopted and accepted by the Administration to bring about the termination of service of a temporary Government servant. It is significant that the Ministry of Home Affairs had not noticed the existence of Condition No. 6 when it was consulted by the Collector as this aspect was not brought to the notice of the Ministry. The said condition was only supplementary to the modes of termination of temporary service, referred to in Rule 5(1) of the CCS Temporary Service Rules and it was not in any way inconsistent with the said Rules. As a matter of fact it was not even suggested or faintly hinted in the High Court that there was any such inconsistency. It is well-recognised that a new service condition may be brought into effect by an executive order and such condition would remain in force as long as it is not repealed either expressly or by necessary implication by another executive order or a rule made under the proviso of Article 309 of the Constitution of India or by a statute. It is not shown in the facts and circumstances of the case and the material produced in the Court that there is any inconsistency between Condition No. 6 and any other order, rule or law. In the circumstances we hold that the letter of resignation is one submitted pursuant to Condition No. 6 in the letter of appointment issued in the case of the appellant.

The next point for consideration is whether there has been full compliance with Condition No. 6 of the letter of appointment of the appellant. Admittedly, the demand draft for Rs.1024.05 paise which was equivalent to the pay plus allowances, which the appellant was drawing every month immediately prior to the date of his letter of resignation had been tendered along with the letter of resignation as enjoined by Condition No. 6. The only question that remains to be considered is whether the appellant had been relieved from his service by the Administration. Condition No. 6 provided that 'before resigning the post, he shall have to give one month's notice to the Administration failing which he shall have to remit one month's period pay before he could be relieved from service'. No rule or executive order prescribing the method or manner in which a temporary Government servant of the rank of an Investigator could be relieved from service under Condition No. 6 of the letter of appointment is brought to our notice. Nor it is shown by adducing any evidence as to what practice had come to vogue as regards relieving such a person. The resignation

contemplated under Condition No. 6 is not the same as the letter of resignation which may be submitted by a Government servant on the acceptance of which he ceases to be a Government servant. In the case of an ordinary resignation which is governed by the Memorandum No. 35/6/57-Ests. (A) Ministry of Home Affairs dated 6th May, 1958 no question of paying a month's salary or allowance to the Government would arise. It is implicit in such a condition that the nature of his employment is such that he can be relieved forthwith without the need for waiting for a month and that he would be so relieved as was indeed done in the case of others governed by such a condition. The only thing that has got to be decided in this case is whether the appellant had been actually relieved from service. There is no dispute that at 10.00 A.M. on 24.11.1984, before the appellant submitted his nomination paper to the Returning Officer, he had handed over all the records, registers, files etc. which were with him to the head of his office along with a letter, a copy of which was submitted to the Collector, who was the appointing authority. This cannot be termed as an unilateral act of the appellant. There was no refusal to accept the records. There was no order to report for duty and discharge any functions. The appellant had not, in fact, been paid any salary or allowance for the period subsequent to 20.11.1984, that is, the date previous to the date of the letter of resignation. He had not attended and he was not required to attend his office from 21.11.1984 except for handing over the records, files, registers etc. on 24.11.1984. The appellant was not asked by the Collector to attend the office till 21.12.1984 nor grievance was made against him for his absence in the wake of his resignation. There was no disciplinary proceeding or any other kind of enquiry pending against the appellant which required the appointing authority not to relieve the appellant from his service in the public interest. And there was no objection raised as a matter of fact on any ground to his being treated as having ceased to be in service eventually till the expiry of one month from the date of his service. It is not as if for administrative reasons his resignation was not acceptable for any reason. It appears to us that the appellant's resignation had become effective at least on the day on which the records were handed over, that is before the date of scrutiny and he had ceased to hold an office before the date of scrutiny. The Returning Officer had rightly overruled the objection and accepted his nomination paper. It is not established by the election petitioner on whom the onus rested that the returned candidate held an office of profit on the date of scrutiny or that his nomination paper was wrongly accepted by the Returning Officer. He cannot therefore successfully assail the election of the returned candidate, the appellant herein. In these circumstances we are of the view that the appellant

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A should be deemed to have been relieved from his service at 10.00 A.M. on 24.11.1984 and he had ceased to be a Government servant before he submitted his nomination paper on 24.11.1984.

In the view we have taken it is not necessary to go into the question whether the Collector had deliberately delayed the acceptance of the resignation of the appellant with a view to assisting the Ist Respondent, who was a Member of the last Lok Sabha, as alleged by the appellant.

We, therefore, allow this appeal, set aside the judgment of the High Court and dismiss the election petition. The appellant is entitled C to the costs both before the High Court and in this Court which we quantify at Rs.5,000. The Ist Respondent shall pay the costs of the appellant. The appeal is accordingly allowed.

S.R. Appeal allowed.