

**Chandulal Vs. Ramdas**

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**Court :** Supreme Court of India

**Decided On :** Feb-07-1969

**Reported in :** 1969(I)LC161(SC)

**Judge :** Shelat and; Bhargava, JJ.

**Acts :** Constitution of Jammu & Kashmir - Sections 69; House of Commons Disqualification Act, 1957; [Constitution of India](#) - Articles 124(6), 148(2), 155, 159 and 219; Jammu and Kashmir Representation of the Peoples Act, 1957 - Sections 24, 44, 45 and 108(1)

**Appeal No. :** Civil Appeal No. 1518 of 1968

**Appellant :** Chandulal

**Respondent :** Ramdas

**Disposition :** Appeal dismissed

**Judgement :**

Bhargava, J.

1. This appeal under the Jammu & Kashmir Representation of the Peoples Act No. 4 of 1957 (hereinafter referred to as 'the Act') is directed against a judgment of the High Court of Jammu & Kashmir allowing an election petition filed by the respondents. Respondent No. 1, the appellant, and one Chajju Ram Saloch were the three candidates who filed their nomination for election to the Jammu & Kashmir Legislative Assembly from the Ramnagar Scheduled Caste Constituency. On the date of scrutiny, which was 23rd January, 1967, the nomination paper of Saloch was rejected by the Returning Officer on the ground that he was holding an office of profit under the Government of Jammu and Kashmir which disqualified him from being a candidate for election to the Legislature Under section 69 of the Constitution of Jammu & Kashmir. Thereafter, there was a straight contest between the appellant and respondent No. 1. The appellant, having secured a larger number of votes, was declared elected. An election petition was then filed by respondent No. 1 challenging the election of the appellant. Respondent No. 2, who was a voter, joined respondent No. 1 in filing this election petition. The election of the appellant was challenged as void Under section 108(1)(c) of the Act on the ground that the nomination of Saloch had been improperly rejected.

2. The Returning Officer rejected the nomination paper of Saloch on the ground that he happened to be in government service and was, thus, holding an office of profit as was clear from Agricultural Order No 20/E dated 19th January, 1967, copy of which

was produced before him by the counsel for the appellant. The other candidates requested for adjournment on the 23rd January, 1967 when this objection was taken at the time of the scrutiny and, as prayed by them, the hearing of the objection was adjourned till 11 O'clock of 24th January, 1967. The Returning Officer noted that, even on the next hearing, Saloch failed to produce any document or proof from the Agriculture Department or any other proof of not being in service, though he had been asked to produce a certificate from the Agriculture Department to rebut the objection. He having failed to do so, his nomination was rejected. In the election petition, the plea taken was that this rejection of the nomination paper was not justified as, in fact, Saloch was not holding any office of profit under the Jammu & Kashmir Government on 23rd January, 1967, which was the date of scrutiny. In contesting the election petition the appellant supported the rejection of the nomination of Saloch not only on the ground mentioned by the Returning Officer, but, in addition, on two other pleas. These two pleas were that Saloch was below the prescribed age of 25 years at the relevant time, and that he failed to comply with the provisions of sections 44 and 45 of the Act. These two new grounds need not detain us, as learned counsel for the appellant arguing the appeal did not urge them before us. He confined his submissions to the disqualification Under section 69 of the Constitution of Jammu & Kashmir and urged that the nomination was rightly rejected by the Returning Officer on that ground. The High Court did not accept this defence of the appellant, held that the rejection of the nomination paper of Saloch was not justified, and declared the election of the appellant void. This decision of the High Court is impugned in this appeal.

3. The facts, on the basis of which the question has to be decided as found by the High Court, are not in dispute. On the 12th of October, 1962, Saloch took a loan from the Government of Jammu & Kashmir to meet expenses for studying for the B.Sc. Agriculture Degree at Ranchi, and executed an agreement, one of the conditions of which was that, on Completion of his training, it would be obligatory on the loan-scholar to serve the Jammu & Kashmir Government, if called upon to do so, for a period of at least seven years on such emoluments and terms and in such capacity as the Government may determine from time to time, though the Government was under no obligation to appoint Saloch in the Government service. Saloch completed his studies and in September, 1966, he applied for appointment to a post in the Agriculture Department of the Government. On 19th January, 1967 an appointment order was issued in the following terms :

'Agriculture Order No. 20/E, dated Jammu 19th January, 1967.

Shri Chajju Ram Saloch B.Sc., Agriculture, son of Shri Avtar Chand R/o Basant Garh Tehsil and Post Office Ramnagar is hereby appointed as temporary Agricultural Assistant in the grade of 250-500 and posted at Government Agriculture Farm Talab Tilco Jammu. He should report immediately to the undersigned.

Sd/- B.S. JOG Director Agricultural Camp, Jammu.'

Saloch did not receive the appointment letter until after the date of scrutiny, though he stated during the trial of the election petition that he was told by his friends about his appointment, so that he approached the Director of Agriculture to join the service. He actually took charge of the post on 3rd February, 1967, and did not serve anywhere earlier than that date. It was after joining the Department that he actually saw the appointment order in the office of the Director of Agriculture. At the time of

scrutiny, Saloch had filed an affidavit before the Returning Officer stating that he has not joined any government service, that he was not performing any government duty, and that he had not received any appointment order.

4. On the basis of these facts, the principal argument advanced by learned counsel for the appellant was that an appointment order having been made, as reproduced above, Saloch must be held to be holding an office of profit under the Government from the date of issue of that order. According to learned counsel, when this order of appointment was issued, there was completion of a contract of service between the Government and Saloch. Saloch had made the offer by applying for appointment in September, 1966. That offer was accepted by the Government and the order of appointment issued on the basis of that acceptance completed the contract of service. According to him, therefore, it should be held that, from the moment this appointment order was made, Saloch was holding the office to which he was appointed. The High Court has taken the view that, since Saloch did not join the post to which he was appointed till after the date of the scrutiny, it cannot be held that he was holding that office on the date of scrutiny. In support of the principle enunciated by learned counsel for the appellant, he referred us principally to the view taken in England in respect of similar disqualification from membership of the House of Commons. In his book 'Parliamentary Elections', A. Norman Schofield, discussing the provisions of the House of Commons Disqualification Act, 1957, mentions the procedure that is usually adopted when a member wishes to resign his seat either permanently, or to test the confidence of his constituency, or to stand as a candidate for another constituency. According to him, the usual method is by application for some office under the Crown which will disqualify the Member for sitting and voting in the House, because there is no provision in England for resigning the membership of the House of Commons by a direct letter of resignation. He adds that :

'The offices which are usually sought are the office of steward or bailiff of the three Chiltern Hundreds of Stoke, Desborough and Burnham, Bucks, and the Manors of Hundred, Yorks, Northstead and Hempholme, or the escheator of Munster. A Member seeking so to resign may be appointed to those offices by means of a warrant signed by the Chancellor of the Exchequer and witnessed. As soon as this warrant is signed, the office holder ceases to be a Member of Parliament, but may be re-elected.'

Erskine May, in his book 'Parliamentary Practice', dealing with the same subject, states:

'It is a settled principle of parliamentary law that a Member, after he is duly chosen, cannot relinquish his seat; and, in order to evade this restriction, a Member who wishes to retire accepts office under the Crown, which legally vacates his seat and obliges the House to Order a new writ. The offices usually selected for this purpose are the office of steward or bailiff of Her Majesty's three Chiltern Hundreds of Stoke, Desborough and Burnham, or that of the steward of the Manor of Northstead, which were undoubtedly offices or places of profit in former times, and the legal fictions of their existence and of their disabling effect on Members have been carefully preserved in the various statutes relating to disqualification.'

Anson in his book 'Law and Custom of the Constitution' says:--

'But office held under the Crown does not always disqualify the holder for a seat in the House, and we may divide offices into groups, having regard to the extent or the

existence of the disqualification.' He then proceeds to classify the offices in three groups as follows:--

(a) The first group comprises those offices the acceptance of which is wholly incompatible with a seat in the House of Commons;

(b) The second group comprises those offices, the acceptance of which vacates a seat, but leaves the holder eligible for re-election; and

(c) There are certain offices the acceptance of which, though they are concerned with the administration of departments of State, does not disqualify from sitting or necessitate re-election.'

The offices mentioned by Schofield and Erskine May, referred to by us above, fall under the category (b) envisaged by Anson. It is on the analogy of these offices where the signing of a warrant of appointment has been stated by Schofield to be sufficient to disqualify a person from continuing as a Member of the House of Commons that learned counsel for the appellant urged that we should also hold that, on the issue of a letter of appointment to a post under the Government of India, that person becomes disqualified from being a Member of a House of Legislature, which implies that he holds the post from the time that the order of appointment is passed.

5. We are not inclined to accept this submission made by learned counsel. It is to be noted that the particular posts mentioned by Schofield and May have been specially preserved for the purpose of enabling Members of the House of Commons to resign from membership which they are otherwise not permitted to do. The House of Commons proceeds on the basis that the moment a warrant of appointment to any of those posts is signed, the appointment becomes effective without any further act on the part of the person so appointed. We do not know the exact nature of those posts or the manner in which a person appointed to those posts can start functioning as a holder of any of those posts. The position in India seems to be different. The provisions of the Constitution of Jammu & Kashmir are parallel to those of the [Constitution of India](#). In the [Constitution of India](#) itself, a provision exists in respect of a number of offices that a person appointed has to take a particular step before he can enter upon his office. Thus, under Article 124(6), a person appointed to be a Judge of the Supreme Court, and, under Article 219, a person appointed to be a Judge of a High Court has to make and subscribe an oath or affirmation before he enters upon his office. Under Article 148(2), every person appointed to be the Comptroller and Auditor-General of India has to make and subscribe an oath or affirmation before he enters upon his office. There is a similar provision in Article 159 in respect of a person appointed as Governor under Article 155 of making and subscribing an oath or affirmation before entering upon his office. In the shorter Oxford Dictionary, the word 'hold' used in connection with 'position, office or 'quality' is equated with the word 'occupy'. On the face of it, a person cannot occupy an office until he enters upon the office, and the entry upon an office is not necessarily simultaneous with the appointment to the office. In these circumstances, we find it very difficult to accept the submission made by learned counsel on the basis of the practice adopted by the House of Commons in England in respect of a few particular offices which have been specially preserved so as to enable a Member of the House to bring into effect his resignation from the membership by seeking an appointment to one of those offices.

6. However, in the present case, it appears to us that we need not express any final

opinion on this point, because we are of the view that the order of appointment in the case of Saloch relied upon by the appellant was not an unconditional order and could not, therefore, take immediate effect. It may be that, as a result of the order, a contract of service may have come into existence; Saloch, under that order, was required to report himself immediately to the Director of Agriculture, even though he had been appointed to a post at Government Agriculture Farm Talab Tilco Jammu. Thus, before taking over the appointment in this post, Saloch was required to report to the Director of Agriculture at a different place. Suppose, Saloch did not report to the Director of Agriculture for five years; can it be held that he would have continued to hold the office of Agricultural Assistant at the Farm at Talab Tilco Jaramu during all those five years? The answer must obviously be in the negative. It seems to us that this order of appointment could only become effective if Saloch first complied with the preliminary condition of reporting to the Director of Agriculture; and it is not the case of any party that, before the date of scrutiny, Saloch reported to the Director of Agriculture in order to comply with this pre-condition. In these circumstances, we must come to the conclusion that the High Court was right in its decision that Saloch was not holding a post under the Jammu & Kashmir Government on the date of the scrutiny.

7. Saloch, according to the findings of fact, reported to the Director of Agriculture later when he went to his office and, thereafter, he joined the post on 3rd February, 1967. On the basis of these further facts, learned counsel for the appellant urged an alternative ground that at least on 3rd February, 1967 Saloch became disqualified to be elected as a candidate and, if so, the rejection of his nomination paper by the Returning Officer must be held to be justified. This submission has to be rejected, because a rejection of the nomination paper by the Returning Officer on the date of scrutiny could only be justified and proper if it was based on facts which existed at the time of scrutiny. Facts, which did not exist at all on that date and came into existence subsequently, cannot be taken into account in order to consider the propriety of the order of rejection of nomination. This alternative ground also, therefore, has no force at all.

8. In the High Court, a feeble attempt was made on behalf of the appellant to justify the order of rejection on one other alternative ground <sup>viz.</sup>, that Saloch was disqualified under S. 24 (d) of the Act. Under that provision, a person is disqualified from being chosen as a member of the Legislature if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account; he has any share or interest in a contract for the supply of goods to or for the execution of any works or the performance of any services undertaken by the Government. The agreement of 1962, under which Saloch was under an obligation to accept a service under the Jammu & Kashmir Government for a period of seven years, was clearly not a case where it can be held that he had any share or interest in a contract for the performance of any services undertaken by the Government. In fact, that agreement did not relate at all to any service undertaken by the Government of Jammu & Kashmir and only laid down an obligation on Saloch to accept an employment under the Government in case the Government decided to appoint him.

In these circumstances, none of the grounds urged by learned counsel to support the rejection of the nomination paper of Saloch by the Returning Officer has any force, so that the High Court was right in its decision that the nomination paper of Saloch was improperly rejected and in declaring the election of the appellant void. The appeal fails and is dismissed with costs.

