occasions, it virtually amounted to withdrawl of resignation. Moreover,—vide letter annexure P/4 dated 15th March, 1976 resignation is stated to be accepted with effect from 9th April, 1976. It will be worthwhile to note that by letter dated 15th June, 1974, copy annexure P/3, a notice was given to the petitioner as to why he should not be charge sheeted. That also means that it was decided at that time by respondent No. 2 that the resignation was not to be accepted.

6. In view of the above reasons, I find that the Labour Court has erred in holding that the resignation was accepted and that the petitioner had abandoned service. Unless the leave was rejected, it cannot be said that the petitioner had abandoned service.

7. In view of the above reasons, the award of the Labour Court is set aside. It is held that the service of the petitioner was terminated. The case is, therefore, remanded to the Labour Court for taking decision in accordance with law after allowing the parties to lead evidence if they so desire. The parties to appear before the Labour Court on 29th January, 2001. The petition stands disposed of.

R.N.R.

Before S. S. Sudhalkar, J

PROF. CHHATTAR PAL SINGH—Petitioner

versus

KANWAL SINGH AND OTHERS—Respondents

E. P. No. 19 of 1996

15th December, 2000

Representation of People Act, 1951—Ss. 23(1)A, 81 and 100 Elections for the Haryana Legislative Assembly—Petitioner challenging election of respondent 2 on the allegation of corrupt practice—Dissolution of the Assembly during the pendency of the election petition—Whether the petition becomes academic and infructuous—Held, yes.

(Loknath Padhan v. Birendra Kumar Sahu, AIR 1974 SC 505, followed)

Held that during the pendency of recording of the evidence of witnesses for respondent No. 1, the Haryana Legislative Assembly was dissolved. This case is covered by the principle laid down in Loknath Padhan v. Birendera Kumar Sahu, AIR 1974 SC 505. This being the position, it will be wholly academic to proceed with the election petition further and I hold that the election petition has become academic and hence infructuous.

(Para 19)

S. K. Garg, *Advocate, for the Petitioners*

M. L. Saggar, *Advocate for respondent No. 1*

JUDGMENT

S. S. Sudhalkar, J.

(1) Elections for the Haryana Legislative Assembly were held in the year 1996. Petitioner had contested the election from 75—Ghirai Assembly constituency of the Hissar district in Haryana. There were other contestants also. Respondent No. 1 was also one of the contestants. He was declared elected. His election is challenged by the petitioner with the prayer that the election of respondent No. 1 be declared void; he be disqualified for committing the corrupt practice during the election; that recounting of the votes of the 75—Ghirai Assembly constitutency be ordered and the petitioner be declared elected and respondent No. 24 Pardeep Kumar son of Manphool Singh be held guilty of committing corrupt practice in the election.

(2) In this case, issues were framed. Some issues were heard as preliminary issues also and thereafter by my order dated 3rd April, 1998, para No. 7 of the petition was struck-down. Rest of the objections on the preliminary issues were not accepted at that time. Evidence was thereafter recorded. After the evidence of the petitioner, evidence of respondent No. 1 started and during the pendency of recording of the evidence of witnesses for respondent No. 1 the Haryana Legislative Assembly was dissolved. Respondent No. 1 then forward to lead any evidence. Thereafter, I heard the learned counsel for the parties.

(3) The preliminary objection raised by the learned counsel for the respondent No. 1 is that the Election petition does not survive in view of the dissolution of the Haryana Legislative

Assembly. This contention is contested by learned counsel for the petitioner. Of course, no evidence has been led on the issue regarding corrupt practice and it has been conceded that the petitioner has not been able to prove the alleged corrupt practice.

(4) The learned counsel for the petitioner has argued that only the issue nos. 7 and 8 survive in the matter. The issues are as under :—

"7. Whether the counting was not done properly and irregularities were committed during calculating the votes which materially effected the result of election ? OPP

8. Whether any case for re-counting of votes has been made out by the petitioner ? OPP

(5) Counsel for respondent No. 1 argued that in view of the fact that allegation of corrupt practice is not proved and the Legislative assembly has been dissolved, this petition has become infructuous and therefore, does not survive. Counsel for the parties have advanced their arguments and have relied on certain authorities.

(6) Learned counsel for the petitioner has relied on the case of *Sheodan Singh Vs. Mohan Lal Gautam* (1) and *Moti Ram Vs. Param Dev and another* (2).

(7) Counsel for respondent No. 1 has relied on the case of *Chairman, Rajya Sabha, P. House and Anr. Vs. S. S. Sohoni and Anr. (3)* and *Loknath Padhan Vs. Birendra Kumar Sahu* (4).

(8) At the outset, it can be said that the case of S. S. Sohoni (supra) is not relevant so far as the point for decision is concerned. In that case, a writ was allowed. Appeal was filed against it. However, during the pendency of the appeal, the challenger sought retirement and resigned from the service, which was allowed. It was held that nothing survived in the appeal. The case being not connected with the law relating to elections, I find that it has no relevance with the present case.

(1) AIR 1969 SC 1024
(2) AIR 1993 SC 1662
(3) JT 2000 (7) SC 397
(4) AIR 1974 S.C. 505

(9) Counsel for the petitioner has argued that the judgment in Sheodan Singh's case is a judgment of three Judges and Loknath's case is a case decided by two Judges of Supreme Court.

(10) Learned counsel for the petitioner argued that the dissolution of the assembly will not come to the rescue of respondent No. 1 in view of the judgment in Sheodan Singh's case.In that case, it was held that if the contention of the appellant that the respondent was guilty of corrupt practices during the election is found to be true then not only his election will be declared void, he is also liable to incur certain electoral disqualifications. In the present case, the question of corrupt practice is admittedly not there.

(11) In Sheodan Singh's case, the Supreme Court has further observed that the election petitions are solely regulated by statutory provisions, and unless it is shown that some statutory provision directly or by necessary implication prescribes that the pending election petitions stand abated because of the dissolution of the Assembly, the said contention cannot be accepted. It has also been observed that the Representation of the People Act, (hereinafter referred to as "the Act") does not provide for any abatement of election petition either when the returned candidate resigns or when the Assembly is dissolved.

(12) The Supreme Court in the case of Lok Nath Padhan (supra) has observed that it is a well settled practice recognised and followed in India that if an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties,it would be waste of public time and indeed not proper exercise of authority for the court to engage itself in deciding it.

(13) Counsel for the petitioner argued that the judgment in Loknath's case is a judgment of two Judges and the judgment in Sheodan Singh's case is a judgment of three Judges of the Supreme Court and therefore, the latter judgment has to be followed. Normally, the above would have been the position but here, in this case, after reading the judgment in Loknath's case, it is clear that the judgment in Sheodan Singh's case is considered and distinguished and when the Supreme Court has itself distinguished the judgment, *this Court accepts the distinction.*

(14) In Loknath's case, their Lordships observed that in Sheodan Singh's case there was allegation of corrupt practice and the position might have been different if the allegations against the respondents were of corrupt practice.It has been held that when there was no allegation of corrupt practice, it would be academic to consider whether or not the respondent No.1 was guilty of corrupt practice charged against him, because the finding of corrupt practice has serious consequences.If the respondent is found guilty of corrupt practice during election, not only his election would be declared void but he would also be liable to incur certain electoral disqualification. It is further observed that it was obvious that when a corrupt practice is charged against the respondent in an election petition, the trial of the election petition must proceed to its logical end and it should be determined whether the corrupt practice was committed by the respondent or not. Their Lordships have quoted the paragraph in the case of Sheodan Singh's case which is as under :—

> "...no one can be allowed to corrupt the course of an election and get away with it either by resigning his membership or because of the fortuitous circumstances of the assembly having been dissolved.The public are interested in seeing that those who had corrupted the course of an election are dealt with in accordance with law".

(15) It is further observed by their Lordships in Loknath's case that the decision of a question whether corrupt practice was committed by the respondent or not would not, therefore, be academic and the Court would have to decide it even if in the meantime the Legislature is dissolved and that, that was precisely the view taken by the court in Sheodan Singh's case. It is further observed in that case that in Sheodan Singh's case the election to the Uttar Pradesh Legislative Assembly was challenged in the Election Petition on the allegation that respondent was guilty of corrupt practice during the election. It was further observed in Loknath's case that in the case of Sheodan Singh, the High Court rejected the preliminary objection but on merits, it took the view that corrupt practice was not proved and accordingly dismissed the election petition. The appellant had therefore, preferred an appeal to the Supreme Court and in appeal also, the same objection was also repeated on behalf of respondents. The Supreme Court had negatived the preliminary objection. The decision in Sheodan Singh's case was on the fact that the charge against the respondent

was of corrupt practice and it was in that context, the Court held that where corrupt practice is alleged against the respondent in an Election petition, the dissolution of the Legislative Assembly during the election petition does not render it infructuous. It has further observed that this ratio will not have any application in Loknath's case where there was no charge of any corrupt practice. It would be proper to quote the relevant lines of the observation in Loknath's case regarding the ratio in Sheodan Singh's case. They are as under :—

> ".....We fail to see how the ratio of this decision can have any application in the present case. Here there is no charge of any corrupt practice against the respondent. The only ground on which the election of the respondent is sought to be invalidated is that he was disqualified at the date of nomination under S.0-A. This disqualification does not involve any act corrupting the course of an election. It has no other consequence than that of making the particulaar election void. It does not entail any electoral disqualification for the future. There is, therefore, no analogy between the two situations and this decision cannot be called in aid by the appellant".

Thereafter, their Lordships in their decision in Loknath's case further considered the observation in Sheodan Singh's case that the election petitions are solely regulated by statutory provisions and that unless it is shown that there is some statutory provision that the pending election petition stands abated because of the dissolution of the Assembly, the said contention cannot be accepted. They also considered the observations in Sheodan Singh's case regarding law relating to withdrawal and abatement being exhaustively dealt with in Chapter IV of Part VI of the Act and regarding whether a petition has abated or not, and whether one can travel outside the provision providing for dropping of an election petition when the Act does not provide for abatement of election petition. Having quoted the relevant paragraphs, their Lordships went to observe in Loknath's case as under :—

> "We fail to see how these observations can be of any help to the appellant. They deal with a totally different contention than the one advanced before us. It may be noted that in this case the charge aginst the respondent

was of corrupt practice and it could not, therefore, be successfully urged on behalf of the respondent that the decision of the question arising in the appeal had become academic on the dissolution of the Utter Pradesh Legislative Assembly. The only contention which the respondent was, thererfore, left with and which he could possibly advance was that an election petition must be held to abate on the dissolution of the Legislature and it was this contention which was dealt with and negatived in these observations. The Court pointed out that the law relating to abatement of election petitios is exhaustively dealt with in Ch.IV of Part VI of the Act and since there is nothing in the Act which provides for abatement of an election petition when the Legislature is dissloved, it must be held that the dissolution of the Legislature does not result in abatement of the election petition. We express our wholehearted concurrence with this view. But the question before us is not whether the appeal in the present case abated on the dissolution of the Orissa Legislative Assembly. That is not the contention raised on behalf of the respondent. The repondent does not say that the appeal has abated and must, therefore, be dismissed. What the respondent contends is that in view of the dissolution of the Orissa Legislative Assembly, *it has become academic to decide the appeal and hence we should decline to hear it.* That is a wholly different contention which is not covered by the observations quoted above. We do not, therefore, think this decision throws any light on the contention raised before us. It does not compel us to take a different view from the one we are inclined to take on principle."

(Emphasis Supplied)

(16) Therefore, the distinction has been drawn in the subsequent judgment in Loknath's case that it is not the question of abatement,but the question being rendered wholly academic and therefore, the Court should decline to hear it. As mentioned above *when the Supreme Court has distinguished its earlier decision,*on discussion is necessary regarding the earlier judgment being of three Judges because this is not the case where the earlier judgment was not referred to in the subsequent judgment. On the contrary, the *earlier judgment was referred to, considered and*

distinguished. Therefore, the view taken in Loknath's case will be applicable to the present case and not that in the case of Sheodan Singh(supra).

(17) Against the judgment in Loknath's case the counsel for the petitioner has cited the case of Moti Ram (supra). In that case also the question of corrupt practice was not involved. In Moti Ram's case, the judgment in Loknath's case is also considered. It has been held in para No. 4 of the said judgment that the case differs from Loknath's case in the sense that in that case the election petition was dismissed whereas in Moti Ram's case, the election petitions against the election of the appellant has been allowed and the election was set-aside when the Assembly was dissolved. *After drawing this distinction in para No. 4 of the judgment,* their Lordships in Moti Ram's case further observed that in view of the fact that the decision of High Court setting aside his election, the appellant may be required to refund the various allowances that he has received while he was functioning as a member of the Legislative Assembly after his election till the decision of the High Court and it would thus appear that in invalidation of the election of the appellant may give rise to the liability to refund the allowances received by the appellant as a member of the Legislative Assembly and it cannot, therefore,be said that the question arising for consideration in that case was purely academic in nature. As mentioned earlier, their Lordships in Moti Ram's case *distinguished* the case from Loknath's, case that in the case of Moti Ram, the election petition was allowed by the High Court when the Assembly was dissolved.. *They did not otherwise differ from* the judgment in Loknath's case and the observations regarding refund of the monetary benefits are considered in the light of the election petition having already been allowed. Of course, their Lordships have not stated that the appellant Moti Ram was required to refund the allowances etc. but they have just stated the possibility that the appellant may be required to refund the same.

(18) Counsel for the petitioner argued that if the election is set-aside, respondent No. 1 will have to refund all the allowances he has received and he would also for-feit his pension. However, though stage of evidence was there at the time when the Assembly was dissolved, no evidence was produced regarding the requirement of refunding the allowances etc. Moreover, the present case also differs from Moti Ram's case to the extent that in the present case, the election petition was not allowed and the election of respondent No. 1 is not set-aside when the question for

consideration of dissolution of Assembly has arisen. The distinction drawn by their Lordships in Moti Ram's case from the Loknath's case is the same which is between Moti Ram's case and this case.

(19) From all the above angles, this case is covered by the principle laid down in Loknath's case. This being the position, it will be wholly academic to proceed with the election petition further and I hold that the election petition has become academic and hence infructuous.

(20) In view of the above reasons, this Election Petition is dismissed as having become academic and hence infructuous.

R.N.R.

Before N. K. Sodhi and R. C. Kathuria, JJ

PARVEEN KUMAR AND OTHERS—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

C.W.P. No. 17571 of 1998

27th November, 2000

Constitution of India, 1950—Arts. 226 and 311—Appointment of petitioners as S. P. Os on daily wage basis by a Standing order—Clause 12 of the Order provides as SPO whose work ans conduct not found satisfactory can be discharged any time without the issue of any notice—Discharge from service on account of absence from duty/misconduct—whether the action of discharging the service of daily wagers without holding a regular enquiry and not affording them an opportunity of hearing is justified—Held, yes—Daily wagers have no right to hold the post—They can be discharged under the terms of contract.

(Rakesh Kumar and others v. State of Punjab, 1999(4) RSJ 194, distinguished,

Sher Singh v. State of Haryana and others, 1994(2) S.L.R. 100 (F.B.), followed)

Held that, as is clear from the standing order which was circulated by the Director General of Police, Punjab, on 26th July, 1990,