

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 5383 of 2008

Suresh Kumar Sharma, S/o Haribhajan Sharma, aged about 36 years, R/o House No.517 Ward No. 27 near Shiv Mandir, New Risda, Bhadarapara Balco Nagar, Tah & District Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through – the Secretary, Vidhi Evam Vidhai Karya Vibhag, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Competent Authority, District & Sessions Judge, Korba, District Korba (C.G.)
3. Mr. Dilip Agrawal, Advocate.
4. Rajkumar Agye, Advocate
5. Arun Singh, Advocate.
6. Manoj Kumar Agrawal, Advocate.
7. Ramdin Bharadwaj, Advocate

All Respondents No. 3 to 7 Address: District Bar Association Korba, Tah & District Korba (C.G.)

---- Respondents

For Petitioner	:	Mr. Abhijit Sarkar, Advocate.
For Respondents No. 1 & 2	:	Mr. Prasun Bhaduri, Govt. Advocate.
For Respondent No. 3	:	Mr. P.K. Patel, Advocate.
For Respondent No. 4	:	Mr. Sanjay Agrawal, Advocate.
For Respondent No. 5	:	Mr. Punit Ruparel, Advocate.
For Respondent No. 6	:	Mr. Raghvendra Pradhan, Advocate.
For Respondent No. 7	:	Mr. Awadh Tripathi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

27/09/2017

(1) The petitioner herein calls in question the order dated 13.08.2008 passed by of District & Sessions Judge, Korba by which his application for appointment of Notary has been rejected on the ground that he had not been practising as an Advocate for the last 10 years on the date of inviting application for the post of Notary.

(2) Learned counsel appearing for the petitioner would submit that the petitioner has been enrolled with the State Bar Council of M.P. (now C.G.) on 7.9.1996 and since then he is practising as an Advocate in the District Court, Korba from 7.9.1996, as such, his experience is more than 10 years as a practising Advocate on 21.04.2008 i.e. the date of inviting applications for appointment of the Notaries by the State Government but his application has been rejected ignoring the provisions contained in Section 3(a) of the Notaries Rule, 1956.

(3) On the other hand, counsel for the respondents would submit that though the petitioner was enrolled with the State Bar Council of M.P. (Now C.G.) on 7.9.1996 but as he has become the member of District Bar Association, Korba with effect from 1.9.1998, he did not have the requisite qualification for appointment of Notary and, therefore, the District Judge, Korba has rightly rejected the application filed by the petitioner for appointment on the post of Notary.

(4) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(5) Section 24(1)(e) of The Advocates Act, 1961 states as under:

“(e) he fulfills such other conditions as may be specified in the rules made by the State Bar Council under this Chapter.”

(6) Section 28(2)(d) of the Act, 1961 reads as under :

“(d) the conditions subject to which a person may be admitted as an advocate on any such roll.”

(7) Section 144(a) of the Rules framed by the State Bar Council of Madhya Pradesh in exercise of powers under Section 28(2)(d) and 24(1)(e) of the Act, 1961, which has been adapted by the State Bar Council of Chhattisgarh, reads as under:

“**144(a)** That, he shall within a month from the date of his enrollment become a member of the Bar Association where he proposes to practise and meticulously observe the rules of that Bar Association. In case of change of place of practice he shall become a member from the date of giving intimation thereof to the Bar Council.”

Explanation: “Bar Association” means a Bar Association recognized by the State Bar Council of Madhya Pradesh under the rules framed by it for the purpose, namely “Rules for recognition of the Bar Association by the State Bar Council of Madhya Pradesh.”

(8) Under the Advocates Act, 1961, an Advocate is entitled to practice anywhere, however, he is required to become a member of the Bar Association where he regularly proposes to practice within

one month from the date of enrollment with the Bar Council.

(9) Now, the question for consideration would be whether an Advocate after enrollment by the State Bar Council, is debarred from the practice, till he becomes member of the Bar Association.

(10) This Court in Writ Petition No. 693 of 2004 (**Naresh Kumar Patel Vs. State of Chhattisgarh & others**) has considered the identical question and held as under:-

“9. Having heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto and also on careful consideration of the provisions of law, in fact, it is nowhere provided that the Advocate after enrollment by the State Bar Council, is debarred from the practice, till he becomes member of the Bar Association. The only condition is that he shall, within a month from the date of his enrollment, become a member of the Bar Association where he proposes to practice and observe the rules of that Bar Association. It cannot be held that the period of practice has to be counted only from the date of becoming of a member of the Bar Association. If an Advocate is not registered with the Bar Association of other place but there also, he is free to practice. He cannot be prohibited from practicing under the Advocate Acts.

11. Another aspect of the matter is that if he is practicing before becoming a member of Bar Association, which authority will give the certificate of experience. Certainly the Bar Association cannot give a certificate, as he was not a member of the Bar

Association. However, the head of the judicial institution i.e. the Court may always give a certificate for experience.”

(11) Thus, an Advocate after enrollment by the State Bar Council is not debarred from practicing as an Advocate and the becoming member of particular Bar Association though necessary but it is not mandatory and his experience and seniority as an Advocate will be counted from the date of enrollment with the State Bar Council and not from the date of becoming member of particular Bar Association.

(12) Now, it would be appropriate to notice Rule 3(a) of the Notaries Rules, 1956, which states as under :-

“3. Qualifications for appointment as a notary.- No person shall be eligible for appointment as a notary unless on the date of the application for such appointment-

(a) A person had been practicing at least for ten years, or

xxxx

xxxx

xxxx”

(13) Thus, in order to eligible for appointment of notary on the date of application, person must be practising as an Advocate at least for 10 years. It is the case of the petitioner that he is practising as an Advocate since his date of enrollment by the State Bar Council i.e. from 7.9.1996 and on the date of inviting application for appointment of Notary i.e. 21.04.2008, he had completed 10 years of his practice but he has not been considered for the post of Notary on the ground that he has taken membership of District Bar Association, Korba

only on 1.9.1998, such a course is clearly impermissible in law.

(14) Since the petitioner is practising as an Advocate since 7.9.1996, after his enrollment from the State Bar Council and admittedly on 21.04.2008 i.e. on the date of making application for appointment of Notary, he had already completed 10 years of practice as an Advocate as on that date and, therefore, he is entitled to be considered for appointment on the post of Notary as per Rule 3(a) of the Notaries Act, 1952, his candidature has illegally been rejected by the State Government.

(15) In view of above, the writ petition is allowed. Impugned order so far as it relates to the petitioner is hereby quashed. The respondents authorities are directed to consider and decide the petitioner's case for appointment of Notary, if the post is vacant, in accordance with law expeditiously.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

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Suresh Kumar Sharma

Versus

State of Chhattisgarh & others

Head Note

Experience and seniority of an Advocate is to be counted from the date of enrollment with the State Bar Council.

किसी अधिवक्ता के अनुभव तथा वरीयता की गणना राज्य विधिक परिषद में उसके नामांकन की तिथि से की जानी है ।

