

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.7885 of 2018

Date of decision : 03.04.2018

Monika Jain

.....Petitioner

Versus

Bar Council of India and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Atul Goyal, Advocate for the petitioner.

Mr. Amit Khatkar, Advocate for respondent No.1.

Mr. B. S. Rana, Senior Advocate with
Ms. Pooja Bansal, Advocate for respondent No.2.

Mr. K. P. Singh, Advocate for respondent No.3.

Mr. R. P. S. Gill, Advocate for respondent No.4.

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DAYA CHAUDHARY, J. (Oral)

The prayer in the present petition is for issuance of a writ in the nature of certiorari for setting aside impugned order dated 23.03.2018 (Annexure P-9) passed by respondent No.3, whereby nomination papers of the petitioner for the post of Joint Secretary in District Bar Association, filed for the coming elections of District Bar Association, Chandigarh scheduled for 06.04.2018, has been rejected.

As per case of the petitioner, she was resident of State of Rajasthan. She passed LL.B. examination in the year 1997. Thereafter, she was enrolled with State Bar Council of Rajasthan vide enrolment

No.R/92/1999. Petitioner was married in the year 1999 with an Advocate who is also practicing lawyer in District Courts at Chandigarh. Petitioner started practice at District Courts Chandigarh along with her husband and became Member of Chandigarh District Bar Association. She made an application for transfer of her enrolment from Bar Council of State of Rajasthan to Bar Council of State of Punjab and Haryana and that application is still pending. All documents were supplied by Bar Council of State of Rajasthan with 'No Objection Certificate'. In the year 2017, petitioner contested election and for that, she filed nomination papers but no objection was raised at that time. The nomination papers filed on 21.03.2018 for contesting election of District Bar Association, Chandigarh have been rejected vide order dated 23.03.2018, which has been challenged before this Court by raising various grounds.

Learned counsel for the petitioner submits that petitioner is duly listed as voter in the voter list prepared for the purpose of election of District Bar Association, Chandigarh for the year 2018-19 and her name is at Sr. No.1150-A. Learned counsel also submits that even the membership with District Bar Association, Chandigarh has not been challenged so far. The nomination paper of the petitioner has wrongly been rejected, whereas the delay was on the part of the Bar Council of India. Her nomination papers were accepted during the election held in the last year. Learned counsel also submits that petitioner has been victimized due to ulterior motive. Petitioner is duly qualified being law graduate and is a practicing lawyer for the last 20 years. The respondent authorities are not passing the

order for transfer of her name from the roll of Bar Council of Rajasthan to that of Bar Council of Punjab and Haryana, whereas all formalities have been completed. At the end, learned counsel for the petitioner submits that a great prejudice would be caused to the petitioner in not accepting the nomination papers of the petitioner for any valid reason.

Notice of motion was issued on 28.03.2018.

Mr. B.S. Rana, learned Senior counsel appearing for respondent Bar Council of Punjab and Haryana submits that the petitioner cannot contest the election as she is not enrolled with the Bar Council of Punjab and Haryana. An application for transfer was to be made within a period of six months and transfer of the name of the petitioner is to be done by Bar Council of India. Petitioner cannot take benefit of the earlier wrong, whereby she was allowed to contest the election in the year 2017. It is apparent from the impugned order dated 23.03.2018 (wrongly mentioned as 23.03.2019 in Annexure P-9) that nomination of the petitioner has been rejected on the ground that she was not enrolled with Bar Council of Punjab and Haryana and her form is in violation of Section 2 (b) and Section 6 of the Bar Associations (Constitution and Registrations) Rules, 2015 as framed by the Bar Council of Punjab and Haryana.

Learned counsel appearing for Bar Council of India submits that the application moved by the petitioner is under consideration and decision is likely to be taken shortly. All formalities were completed in the month of December, 2017.

Learned counsel appearing for District Bar Association,

Chandigarh submits that not only the nomination papers of the petitioner but the nomination papers of other candidates were also rejected, which were not found in order. Learned counsel also submits that the facts of enrolment of petitioner with Rajasthan Bar Council were verified and enrolment No.R/92/1999 as mentioned by the petitioner in her documents was not in her name as it was in the name of one Mr. Rajesh Maharishi. Even in the official website of Bar Association of Jaipur, the said enrolment was reflected against Rajesh Maharishi. Thereafter, a clarification was sought and subsequently, it was clarified that her enrolment number was changed as she was enrolled as an Advocate on the roll of State Bar Council at Sr. No.R/92/1999. The new enrolment number of the petitioner was intimated to be R/7/1998 dated 01.01.1998. The delay has occurred because of reasons of not carrying the correct enrolment.

Heard arguments and have also perused the documents on the file.

As per the Bar Associations (Constitution and Registrations) Rules, 2015 framed by Bar Council of Punjab and Haryana, an Advocate enrolls with other State Bar Council is not entitled to vote in the election unless he/she gets his name transferred under Section 18 of the Act, before the finalization of the voter list. Every Advocate is under an obligation to see that his/her name appears on the roll of Bar Council within whose jurisdiction he/she originally practices. As per the Rules in the election of Bar Association, an Advocate has a right to cast his/her vote only at one Bar Association and for that, he/she has to file an affidavit to this effect that

he/she intends to cast vote in a particular Bar Association elections. For the post of Joint Secretary, any Member who is having at least three years regular and active practice from the date of enrolment with Bar Council has a right to contest the election. Since name of the petitioner has not been transferred from the roll of Bar Council of Rajasthan to the Bar Council of Punjab and Haryana, she cannot cast her vote what to talk to contest election and as such she has even no right to contest election. Accordingly, her nomination papers have been rejected. However, the case of the petitioner is pending with Bar Council of India and same has not been considered/decided. As per submission made by learned counsel appearing for Bar Council of India, the transfer case of petitioner is under consideration and decision is likely to be taken.

Accordingly, the present writ petition is dismissed with direction to the Bar Council of India to take decision on the application of the petitioner for transfer of her enrolment from Bar Council of Rajasthan to Bar Council of Punjab and Haryana within a period of four weeks from the date of receipt of certified copy of this order. However, the Court is not inclined to interfere with the impugned order of rejection of nomination, as she cannot be allowed to contest election only on the ground that she contested the election in the last year and no objection was raised.

03.04.2018*sunil yadav***(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No