

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

C.W.P. No.4099 of 2018

Date of Decision:- 24.05.2019

Lata @ Lata Mangesh

....Petitioner

vs.

Manju Kumari and others

....Respondents

**CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mr. Amarjeet Singh Virk, Advocate,
for the petitioner.

Mr. Kunal Dawar, Advocate,
for respondent No.1.

SUDHIR MITTAL, J.

Election for the post of Sarpanch of Gram Panchayat Village Mangoraka was held on 17.1.2016. The said post was reserved for a woman candidate and the petitioner and respondent No.1 were candidates there for. As per law, a woman candidate for the post of Sarpanch who possess the educational qualification of 8th Class pass is eligible but the petitioner did not possess the said qualification which motivated respondent No.1 to make a complaint to the Deputy Commissioner/District Election Officer. The State Election Commission Haryana, vide its letter dated 10.1.2016, directed the Deputy Commissioner/District Election Officer to conduct an enquiry into the matter but he did not take any action. The petitioner was declared elected and, therefore, respondent No.1 challenged her election by way of an election petition on the ground that she did

not possess the requisite educational qualification and, thus, her election is void and should be set aside. Vide impugned order dated 19.1.2018, the learned Additional Civil Judge (Sr. Div.), Hathin, allowed the election petition and set aside the election of the petitioner. A direction was also issued for conducting a fresh election. Aggrieved by this order, the elected candidate has preferred the present writ petition.

2. While issuing notice of motion, operation of the impugned order was stayed and, thus, fresh elections have not been held. A detailed written statement has been filed on behalf of respondent No.1-Election petitioner.

3. Learned counsel for the petitioner contends that the impugned order is illegal and is liable to be set aside as the findings therein are perverse and contrary to the record. The petitioner had proved that she is 8th Class pass by way of marksheet Exhibit RW2/A. Her transfer certificate is Exhibit RW2/B. These documents have been proved by RW-2 Ram Gopal, Assistant Teacher, Shri Radha Krishna Puran Middle School, Tilkagarhi, District Mathura, U.P. and, thus, the learned Additional Civil Judge (Sr. Division), Hathin, was not justified in setting aside her election. The finding that her mark-sheet and transfer certificate are forged documents, cannot be sustained in law because forgery has to be proved beyond reasonable doubt and respondent No.1 has failed to provide evidence which could conclusively establish that her school record was forged. The learned Additional Civil Judge (Sr. Div.), Hathin has passed the impugned order on the basis of inferences and the same is not permissible in law. Thus, the impugned order deserves to be set aside.

4. Learned counsel for respondent No.1 supports the impugned order. His submission is that where corrupt practice is not alleged, the standard of proof is similar to that in a civil case i.e. preponderance of probabilities. He places reliance upon judgment of this Court dated 26.4.2019 passed in CWP No.7141 of 2019

Sanjeeda vs. State of Haryana and others, and three judgments by a Single Bench

decided on 4.5.2017, CWP No.13689 of 2017 *Smt. Batul Bano vs. Smt. Bismillah*, decided on 29.8.2017 and CWP No.16405 of 2016 *Heera Singh vs. Jitendra Kumar Gurjar*, decided on 6.4.2017.

5. It is not in dispute that vide Haryana Panchayati Raj Amendment Act, 2015, a condition has been inserted in Section 175 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act') that in case of a woman candidate for the post of Sarpanch or Panch of a Gram Panchayat, the minimum qualification is middle pass, which is equivalent to 8th Class. The questions to be decided, therefore, are whether the learned Additional Civil Judge (Sr.Div.), Hathin was justified in deciding the election petition on 'preponderance of probabilities', and whether his finding that the petitioner was not 8th Class pass, suffers from any infirmity or is perverse?

6. The first question is whether the learned Court was justified in deciding the case on preponderance of probabilities?

7. In the case of *Shaukat (supra)*, a learned Single Judge of the Rajasthan High Court has placed reliance upon *Chhedi Ram vs. Jhilmit Ram*, (1984) 2 SCC 281 to hold that unless the election petition is filed on the ground of corrupt practice, the standard of proof required is preponderance of probabilities. A similar view has been taken in the case of *Batul Bano (supra)* and *Heera Singh (supra)* also. Learned counsel for the petitioner has not been able to cite any law to the contrary. Even on first principle, the Act provides the Civil Court as the forum for decision of election petitions. Where no corrupt practice is involved, the said Court would decide an election dispute based on the standards of proof required in civil cases and, therefore, the argument of learned counsel for the petitioner that the fabrication of school leaving certificate and mark-sheet of the petitioner had to be proved beyond reasonable doubt is rejected.

8. The next question is whether the impugned judgment is perverse? The

Puran Middle School Tilkagarhi (Uttar Pradesh) and he proved her 8th Class marksheet through Exhibit RW-2/A and the transfer certificate through Exhibit RW-2/B. The transfer certificate Exhibit RW-2/B shows that the petitioner was a student of the school from 1994 to 1996 during which period she studied in 6th Class to 8th Class.

9. On the other hand, respondent No.1-Election petitioner examined Dinesh Jain, JBT Teacher as PW-2, who brought the original record pertaining to the date of birth of Manita Devi daughter of Kishan Chand and Dheeraj son of Kishan Chand, whose respective dates of birth are 5.5.1994 and 2.9.1998. She also examined Urmila, CRA Civil Hospital, Palwal as PW-3, who proved certificate Exhibit PW-3/A regarding date of birth of Sudhir son of Kishan Chand and certificate Exhibit PW-3/B regarding date of birth of Sumitra son of Kishan Chand which are 6.1.1995 and 18.10.1996 respectively. In her cross-examination, the petitioner appearing as RW-3, has admitted that the aforementioned Manita, Sumitra, Dheeraj and Sudhir are her children. The attendance register of the school Exhibit P-35 is on the record and according to the said register, no student of the school was absent from 1994 till January, 1997. Further, the petitioner while being cross-examined as RW-3 has also admitted that ever since her marriage, she has been residing in village Mangoraka, District Palwal and that she had completed her studies before marriage. Respondent No.1-Election petitioner has also proved on record Exhibit P-57, a report of the District Elementary Education Officer, Mathura as well as Exhibit P7/D, which is a letter dated 21.6.2016 written by the Block Education Officer, Nohjhil (Mathura) to District Elementary Education Officer, Mathura, wherein it has been stated that the transfer certificate issued in respect of the petitioner is a fabricated document as the Principal of the concerned school has not been able to produce any record in support of the said certificate. The Election Tribunal also put very simple questions to the petitioner such as meaning of word 'subject' and 'roll no.' but she was unable to answer the same.

10. On evaluation of the entire evidence on record, the learned Election Tribunal concluded that the mark-sheet and school leaving certificate produced by the petitioner were fictitious documents and in fact she never attended the school from which the said documents were issued. The reasons for the said finding are manifold:- (a) According to the petitioner herself, she resided in District Palwal since her marriage and if that be so, there was no possibility of her attending a school in the State of Uttar Pradesh because her children were born between the years 1994 to 1996 which is the period when she allegedly attended the school; (b) by her own admission, the petitioner had completed her education before she got married but this is contrary to the evidence on record as her children were born during the period she allegedly attended school; (c) there is positive evidence on record that the children of the petitioner were born between the period 1994 to 1996, yet the attendance register, which is for the same period, reflects her 100% attendance, which is not humanly possible and, thus, the school record is patently fabricated; (d) the Principal of the school was unable to produce any record pertaining to the transfer certificate and mark-sheet of the petitioner even when directed by the education authorities of the District which, in turn, concluded that the said documents were fabricated; and (e) although the petitioner was allegedly 8th class pass, she did not know the meaning of simple words like 'subject' and 'roll no.'

11. Under the aforementioned circumstances, can it be said that the finding of the Election Tribunal is perverse? To return a finding of perversity, it is essential to hold that the finding is such that no reasonable person could reach such a conclusion based on the evidence on record or that the finding is based on no evidence or is based on misreading of the evidence. In the instant case, it cannot be held so. The learned Court has evaluated the entire evidence on record and returned a reasonable finding and the same is not liable to be interfered with. In the case of *Sanjeeda (supra)*, we have observed that writ in the nature of Certiorari can only be

applies in this case also on all fours.

12. The election petitioner has successfully discharged the onus placed on her and, thus, the learned Additional Civil Judge (Sr. Div.), Hathin was justified in setting aside the election of the petitioner. There being no perversity in the findings returned by him, the conditions precedent for issuance of a writ in the nature of Certiorari are non-existent.

13. Before parting with this judgment, it would be appropriate to deal with another argument raised by learned counsel for the petitioner that Exhibit P-7/D and Exhibit P-57 could not have been read in evidence as they have not been proved in accordance with law. To recapitulate, the said documents are letters written by the Block Education Officer, Nohjhil and the District Elementary Education Officer, Mathura respectively. The same were received by respondent No.2-Election petitioner when she sought information under the Right to Information Act, 2005. Since the documents have been received by the petitioner, she was competent to prove them in Court. Moreover, when these documents were exhibited, no objection was taken by the petitioner or on her behalf. In such a situation, the petitioner cannot object to their admissibility in this writ petition. Therefore, this argument also deserves to be rejected.

14. In view of the aforementioned reasons, there is no merit in this writ petition and the same is accordingly dismissed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

May 24, 2019

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Whether speaking/reasoned

Yes

Whether reportable

Yes