
(2022) 08 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition No.11415 Of 2019

Ganesh Dadarao Thombre

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 10-08-2022

Acts Referred:

Citation : (2022) 08 BOM CK 0022

Hon'ble Judges : Mangesh S. Patil, J;Sandeep V. Marne, J

Bench : Division Bench

Advocate : Yuvraj V. Kakade, M.A. Deshpande

Final Decision : Allowed

Judgement

Sandeep V. Marne, J

1. Heard. Rule. It is made returnable forthwith. Learned AGP Smt. M.A. Deshpande waives service for respondent nos.1 to 4. The matter is heard finally at the admission stage.

2. By way of present petition, the petitioner seeks correction of entry of caste in his birth certificate from "Kunabi Hindu" to "Maratha". The request of the petitioner has been turned down by way of communication dated 14.08.2019 on the ground that since the petitioner has already left the school, correction cannot be made in accordance with the provisions of clause 26.4 of the Secondary Schools Code, 1986.

3. The issue involved in the present petition is no more res integra. Full Bench of this Court in Janabai Himmatrao Thakur Vs. State of Maharashtra and others, [2019 (6) Mh.L.J. 769] has dealt with the issue of scope of correction of entries in the school record and has held as under:

"39. This being the position, we answer Question Nos.(A) and (C) in the following terms :

(a) An application for alteration in the entries in the General Register is permissible, with the previous permission of the appropriate authority at any time when the pupil is attending the school.

(b) No application for alteration in the figure of date of birth is permissible, after the student has left secondary school, except correction in the nature of 'obvious mistakes' as indicated in Clause 26.3 i.e. of a nature where the date of a particular month which does not exist in the calendar and likewise.

(c) Thus, in light of the above, an application for change in the name, surname or caste, either due to reasons / cause unnoticed before or even occurring subsequently, being errors which fall within the category of 'obvious mistakes', can be made, even after the student has left school in light of the language of Clause 26.3 in the manner as indicated by Appendix Six in the forms as prescribed in the S.S. Code.

(d) For the purposes like admission to another educational institution, in cases of obvious mistakes as prescribed in Clause 26.4, a change/ correction in the school leaving certificate, so as to make the entry consistent with the corresponding entries in the General Register of the School is permissible, which in fact is in consonance with (c) above."

4. Thus, so far as alteration of entry of caste is concerned, the Full Bench has held that such alteration is permissible only in respect of errors which fall within the category of "obvious mistakes".

5. Mr. Kakade, advocate appearing for the petitioner submitted that the Sub Divisional Officer, Aurangabad has issued caste certificate in respect of the petitioner certifying that he belongs to Maratha Caste. He further submitted that in the school leaving certificates of his sisters, the caste is mentioned as "Maratha". He, therefore, contended that there is an obvious error in recording the caste of the petitioner in the school record and therefore, he is covered by the direction in para 39 (c) of the decision of Full Bench in Janabai (supra).

6. Per contra, Smt. M.A. Deshpande, AGP appearing for respondent - State submitted that the alteration does not fall within the category of "obvious error". She further submitted that the petitioner had applied in pursuance of selection process for the post of Talathi in SEBC category as the reservation for 'Maratha' caste was permissible for SEBC category during the year 2019. She, therefore, submitted that the intention of the petitioner in seeking alteration of caste entry in the school record was obviously to get benefit of erstwhile reservation in SEBC category.

7. "Kunabi Hindu" is not a recognized caste. In the School Leaving Certificate, the column of "religion" is left blank and in the column of "caste" Kunabi Hindu has been mentioned. Thus, instead of writing the word "Hindu" in the religion column, the same appears to have been erroneously added to the word "Kunabi" in the caste column. There is also no denial to the fact that in school leaving

certificates of the two sisters of the petitioners, their caste is shown as "Maratha". The petitioner is also issued caste certificate dated 10.09.2014 by Sub Divisional Officer, Aurangabad certifying that he belongs to "Maratha" caste.

8. The submission of Smt. Deshpande that the intention of the petitioner in seeking alteration of entry of caste in the school record was to receive benefits of reservation in SEBC category, appears to be attractive in the first blush. However, it is a common ground that reservation to SEBC category is held to be invalid by the Supreme Court and is no longer available. Therefore, as of today the petitioner cannot get any reservation benefits upon alteration of caste entry in his school record as "Maratha". Rather, with the entry of "Kunabi" the petitioner can get the reservation benefit from OBC category. The petitioner is still insisting for change of entry of caste in school record from "Kunabi" to "Maratha".

9. Thus, we have before us the petitioner who wants to alter the entry of "Kunabi" in his school record, which would grant him benefit of reservation to that of "Maratha" which would make him eligible only in open category. Therefore, there cannot be any ulterior motive in seeking correction of entry regarding the caste in the school record. It is on account of these peculiar circumstances that we are inclined to exercise our jurisdiction in the present matter. We have already held that there is no caste such as "Kunabi Hindu" and therefore, there appears to be an "obvious mistake" in recording the caste of the petitioner. Our order, however, shall not be construed to mean that every case of correction of entry of caste falls within the category of "obvious mistake".

10. We, therefore, hold that the case of the petitioner falls within the category of "obvious mistake" and the petitioner is required to be extended the benefit of para 39 (c) of the Full Bench decision of this Court in Janabai (supra). We, therefore, proceed to pass the following order.

ORDER

(i) The communication dated 14.08.2019 of Respondent no.4 - Education Officer (Secondary) Zilla Parishad, Aurangabad is quashed and set aside.

(ii) Respondent no.3 is directed to issue necessary directions to respondent no.5 school to correct the entry with regard to the caste of the petitioner from "Kunabi Hindu" to "Maratha".

11. With the above directions, the petition is allowed without any order as to costs.

12. Rule is made absolute.