

(2011) 03 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1056 of 2009 and CMP No. 1987 of 2009

Javed Ahmad Malik

APPELLANT

Vs

Chairman, J and K Bose and Others

RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Citation : (2011) 2 JKJ 93

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Judgement

Muzaffar Hussain Attar, J.—Petitioner applied the J&K State Board of School Education, Srinagar, for change of his caste from 'Zargar' to

'Malik' on the ground that his actual caste is 'Malik' and the school records also depicted his caste as 'Malik'. Petitioner has placed on record

xerox copy of the relevant page of Admission Register of the Government Primary School, Palpora, Shopian. The entry reveals that the Petitioner

has been admitted in the school on May 1, 1971; his date of birth is shown as April 1, 1965 and his name is mentioned as Javed Ahmad S/o Ali

Mohammad Malik. Petitioner has also placed on record copy of the application form seeking correction in his caste. Petitioner has also placed on

record communication of the Joint Secretary, Certificates, Kashmir Division wherein Government Primary School, Palpora, Shopian and

Government High School Vehil, Shopian were requested to give information. Petitioner has also placed on record revenue extracts to indicate that

his caste is 'Malik' and not 'Zargar'.

2. Copy of the state subject certificate is also placed on record to indicate that his caste is 'Malik' and not 'Zargar'. Communication issued by

Headmaster, Government Primary School, Palpora, Shopian, dated April 10, 2006 addressed to Joint Secretary, Certificates, J&K Board of

School Education, Srinagar is also placed on record. Perusal of the communication reveals that the Petitioner was admitted with name Javed

Ahmad Malik S/o Ali Mohammad Malik R/o Malik Gund, Shopian. It is also mentioned in the said communication that in the School Leaving

Certificate his caste is mentioned as 'Zargar' and it has happened due to clerical mistake. The Assistant Secretary, Certificates, Kashmir Division,

in terms of the impugned communication has informed the Petitioner that his case for correction of caste is not covered under the purview of rules

governing the cases of correction and that the case accordingly stands consigned to records. The Petitioner is aggrieved of the said communication.

3. On notice issued, Respondents 1 to 5 have filed reply affidavit. In the reply affidavit, it is pleaded that the Petitioner, having passed his

matriculation examination in the year 1982 and, thereafter, also having attained further academic qualifications, has taken up the issue at the belated

stage. The delay in seeking correction in the caste is the main ground on which, it appears, that the claim of the Petitioner has been rejected.

4. Heard learned Counsel for the Petitioner. Considered the matter.

5. Learned Counsel for the Petitioner argued in tune with his pleadings. Learned Counsel submitted that the communication impugned in this writ

petition suffers from lack of application of mind and that it does not disclose any reason for rejection of the claim of the Petitioner. It is also

submitted that the Respondents have simply rejected the claim of the Petitioner and did not even refer to the rule under which the Petitioner's claim

has been rejected.

6. Though overwhelming evidence has been placed on record of the writ petition to show that caste of the Petitioner is 'Malik' and not 'Zargar' but

without proof same cannot be relied upon. The documentary evidence produced alongwith the writ record has neither been controverted nor

admitted by the Respondents in their reply affidavit. The authorities have issued the impugned communication without affording an opportunity to

the Petitioner to show as to whether these documents are genuine and correct. In absence of proof and in the facts and circumstances of this case,

no reliance can be placed on these documents by the writ court.

7. The Respondents, however, were duty bound to seek information from the concerned authorities in the light of the documents produced by the Petitioner before them. One communication of the Headmaster, Primary School which is placed on record of this writ petition shows that it has been issued in response to the communication of Joint Secretary, Certificate, Kashmir Division. Nothing is said in the impugned communication about the aforementioned communication of Headmaster, Government Primary School, Palpora, Shopian, while rejecting the claim of the Petitioner. It was the duty of the Respondents to consider this communication and thereafter take a decision thereon. The communication having not been considered by the competent authority does show that the impugned communication suffers from non-application of mind and the cardinal principal of natural justice is infringed. Even the particular rule under which the claim of the Petitioner has been rejected has not been quoted in the impugned communication.

8. For the abovestated reasons, this petition is disposed of in the following manner;

By issuance of writ of Certiorari, impugned communication No. F 907 (Certs-Corr-1)B/2009 dated 13.02.2009 is quashed. Respondents are directed to reconsider the claim of the Petitioner in light of the rules occupying the field as also the documents which have been produced by the Petitioner or which he will produce in support of his claim and in the light of the observations made in this order. Respondents to consider the claim of the Petitioner and take a decision thereof within a period of two months from the date copy of this order is served on them.