

(2012) 03 BOM CK 0225

In the Bombay High Court

Case No : Writ Petition No. 1138 of 2009

Shaikh Shafi Ahmed Khadarsab

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Citation : (2013) 1 BomCR 660

Hon'ble Judges : Karnik D.G., J;Deshmukh S.B., J

Bench : Division Bench

Advocate : S.B. Gastgar, for the Appellant; B.V. Wagh, A.G.P., for Respondents 1, 2 and 4 and G.R. Ingole Patil, for the Respondent

Judgement

Karnik D.G., J.—Rule, returnable forthwith. Learned A.G.P. waives for respondent Nos. 1, 2 and 4. Mr. G.R. Ingole Patil, waives for respondent No. 3. Learned Counsel for the petitioner does not press the petition as against respondent Nos. 5 to 8. Petition against respondent Nos. 5 to 8 is disposed of as not pressed.

2. Petitioner joined the respondent No. 5 school conducted by Zilla Parishad, Nanded, in December, 1996 in the 3rd standard and passed out on passing Secondary School Certificate Examination in the year 2004. He, thereafter, joined Rajrshi Mahavidyalaya, a Junior College under respondent No. 8.

3. At the time of his entry in the respondent No. 5 school the petitioner's father had mentioned his caste to be "Takankhar" and an entry to that effect was made in the General Register of the school. After joining the respondent No. 8 school, petitioner made an application to the respondent No. 3 Education Officer (Primary), on 4th September, 2006 for permission to change the entry of his caste in the General School Register from Takankhar" to "Tadvi". By an order dated 4th September, 2006 the Education Officer (Primary) rejected the application. Aggrieved by the refusal, the petitioners challenged the order by filing Writ Petition No. 7138 of 2006 in this Court. By an order dated 19th June, 2007 this Court dismissed the petition on the ground that the petitioner had an

adequate alternate remedy of an appeal before the Deputy Director of Education- the respondent No. 2 herein. The petitioner, thereafter, filed an appeal before the Deputy Director of Education. By an order dated 27th December, 2008 the respondent No. 2 rejected the appeal of the petitioner on the ground that an amendment to an entry in the school register can be made only while the petitioner was taking education in the same school and not after he had left it. That decision is impugned in the present writ petition.

4. Learned A.G.P. appearing for the State Authorities and Mr. Ingole Patil learned Counsel appearing for respondent No. 3 submitted that as per para 26.4 of Secondary School Code [for short, the S.S. Code] an application for correction of date of birth, name, surname, caste, etc. as entered in the general school register can be entertained on behalf of the pupil only while he was taking education in the school. Such an application cannot be entertained after he had left the school for any reason whatsoever. Since the application had been made by the petitioner after he had passed the 10th standard and joined Higher Secondary School (Junior College), the application could not be entertained.

5. The short question which arises for our determination is: "whether an application for change or correction of date of birth, name, surname, caste etc. as entered in the general register of a school cannot be entertained after the pupil has left the school?".

6. Para 26.4 of the S.S. Code, on which reliance is placed, reads as under:

26.4. Application for change or correction of date of birth, name, surname, caste etc. as entered in the General Register shall be entertained from or on behalf of a pupil who is attending a school. Such application shall not be entertained from or on behalf of a pupil, who has left the school, as the same amounts not only to a change in the entries in the General Register but also to a change in the School Leaving Certificate. However, for the purposes like an admission to another educational institution the School Leaving Certificate is relied upon as an evidence for name, surname, caste, date of birth etc., and hence in bona fide cases where wrong spelling of a word or an obvious mistake of the type mentioned in sub-rule (3) above is noticed any time after issue of the School Leave Certificate and the same is required to be corrected so as to be consistent with the corresponding entries in the General Register of the school or those in the School Leaving Certificate issued by the previous school, such applications shall be entertained. The procedure to be followed in such cases is laid down in Appendix Six.

Undoubtedly, para 26.4 of the S.S. Code says that the application for change or correction of date of birth, name, surname, caste etc. shall not be entertained from or on behalf of the pupil who is attending the school as the change amounts not only to a change in the entries in the general register but also amounts to a change in the school leaving certificate. In our view, the instructions contained in para 26.4 of the S.S. Code that the application for a change or a correction

cannot be entertained after the pupil has left the school are directory in nature and not mandatory for the reasons indicated below.

7. Firstly, it may be noted that the S.S. Code is neither a statute nor a Rule framed under a statute. The S.S. Code contains only executive instructions. The executive instructions, of course, are required to be followed by a school for being recognised, by the department of education. Any breach of the S.S. Code can result in the withdrawal of the recognition of the school. Yet the fact remains that S.S. Code does not have a statutory force.

8. The first sentence of Para 26.4 of the S.S. Code says that an application for change or correction of date of birth, name, surname, caste etc. as entered in the General Register can be entertained from and on behalf of a pupil who is attending the school. Para 26.4 of S.S. Code thus contemplates that an application for a change of an entry in the General Registrar (of a school) is not only permissible but is also required to be entertained. The second sentence of para 26.4 of S.S. Code says that such an application shall not be entertained from and on behalf of a pupil who has left the school as the same amounts not only to a change in the entries in the General Register but also to change in the school leaving certificate. Thus, the only reason given for not entertaining an application of change of an entry in the General Register of a school after pupil has left the school is that the change would amount to a change not only in the General Register but also a change in the school leaving certificate. The 3rd sentence of para 26.4 of the S.S. Code is an exception to the second sentence and says that in bona fide cases where wrong spelling of a word or an obvious mistake of the type mentioned in sub-rule (3) is noticed any time after issue of the school leaving certificate and the same is required to be corrected, so as to be consistent with the corresponding entries in the General Register of the school, or those in the school leaving certificate issued by the previous school, such an application can be entertained. This contemplates that notwithstanding the command contained in second sentence of para 26.4 of the S.S. Code that an application for correction shall not be entertained after the pupil has left the school, the application can be entertained in bona fide cases where there are obvious errors. This makes it clear that the bar of not entertaining an application on behalf of the pupil who has left the school is not absolute and notwithstanding the bar such an application can be entertained in bona fide cases. This is a clear indication that second sentence of para 26.4 of the S.S. Code is not mandatory but only is directory.

9. We would take an illustration as to what would happen in case we hold that the bar contained in para 26.4 of the S.S. Code is mandatory. Take a case where a student after passing the 3rd standard of a school leaves the school on account of financial reasons. The school leaving certificate is issued to him after he leaves the school. After reading the school leaving certificate he notices some error in the school leaving certificate. On enquiry, he learns that the error was on account of initial entry in the General Register. If we were to hold that the Rule is

mandatory an application for any correction of entry in the General Register cannot be entertained except in the cases covered by 3rd sentence of para 26.4 of the S.S. Code, the application would probably be rejected. If the very same student takes fresh admission in 4th standard after his financial position improves he would continue to be a pupil of the same school. If he then makes an application for change in the General Register, then the application would be entertained because he is still a student in the same school. Thus, in respect of same student, the application would not be entertained in the first case and would be entertained in the second case. This would give rise to an incongruous situation.

10. For all these reasons, we hold that the instructions contained in para 26.4 of the S.S. Code that an application for change of an entry in the General Register of a school shall be entertained only on behalf of the pupil who is attending the school meaning thereby that it shall not be entertained on behalf of the pupil who has left the school, are directory and not mandatory. In our view, such an application can be entertained even after the pupil has left the school, provided the application is bona fide and the pupil is able to satisfy that the original entry in the General Register of the school is erroneous. The application can be rejected if the entry is not shown to be erroneous and wrong. It, however, cannot be rejected without it being considered on merits, only on the technical ground that the application has been made after the pupil has left the school.

11. In the present case, the application has been rejected not on merits but only on the technical ground that it had been made after the petitioner had left the school and joined the junior college. In our view, the respondent No. 3 Education Officer ought to have considered the application on its own merits and ought not to have rejected it only on the technical ground that the application had been made after the petitioner had left the school. Of course, for ordering any change the respondent No. 2 would have to be satisfied about the merits of the case and the bona fides of the petitioner.

12. For these reasons, the impugned order is set aside and the matter is remanded back to the respondent No. 2 for consideration of the application of the petitioner on its own merits. We clarify that we have not expressed any opinion as to whether the change sought by the petitioner is bona fide or proper. We also clarify that we have not examined the caste claim of the petitioner and express no opinion as to the real caste of the petitioner. Rule is made absolute to the extent indicated above.