

**(2000) 10 BOM CK 0017**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 674 of 1986**

Sopan Marutirao Pottulwar

APPELLANT

Vs

Maharashtra Public Service Commission and Others

RESPONDENT

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**Date of Decision :** 13-10-2000

**Acts Referred:**

Constitution of India, 1950 — Article 143T, 226

**Citation :** (2001) 2 ALLMR 155 : (2001) 2 BomCR 740

**Hon'ble Judges :** R.M.S. Khandeparkar, J

**Bench :** Single Bench

**Advocate :** Yashwant A. Goswami, holding for Pradeep Deshmukh, for the Appellant; G.L. Deshpande, A.G.P. for Respondent Nos. 1, 2 and 4 and S.M. Kulkarni, for the Respondent

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## Judgement

R.M.S. Khandeparkar, J.—Heard Advocates for the parties.

2. Perused the record.

3. The petition arises from the order passed by the Divisional Commissioner, Aurangabad dismissing the appeal filed by the petitioner against the order of the Scrutiny Committee rejecting the claim of the petitioner to be belonging to Mannerwarlu Scheduled Tribe.

4. The Scrutiny Committee found that the school records in relation to the caste of the petitioner was changed at the instance of the father of the petitioner and that too much after the petitioner had left the school and the said change was from Mannerwar to Mannerwarlu as well as the change of surname from Mali to Pottulwar, and therefore, the Committee considered the claim of the petitioner unbelievable and refused to give any credence to the other documents like affidavits and certificates of persons claimed to be of blood relations of the petitioner. The said order of the Scrutiny Committee has been confirmed by the Divisional Commissioner as the petitioner has not been able to justify the cause and the circumstances under which the said changes in the school records in

respect of his surname and the caste were brought about. The Divisional Commissioner has also found that the claim of the petitioner that other persons are of the blood relations of the petitioner has also not been proved by cogent evidence in that regard and it has been further observed that the Mannerwar is a distinct caste from Mannerwarlu and under no circumstance a person having surname Mali can be said to be belonging to Mannerwarlu tribe.

5. While assailing the impugned orders the learned Advocate for the petitioner has submitted that the affidavits of the blood relatives placed on record clearly disclose that they belong to Mannerwarlu tribe and, therefore, there was no justification for the authorities below to discard the said evidence or to disbelieve the same and not to consider the same while deciding the caste of the petitioner. Drawing an attention to the decision of the Scrutiny Committee in relation to the caste claim of Kumari Vijaylaxmi Kishanrao Ambulgekar, the learned Advocate submitted that the affidavits placed on record by the petitioner clearly disclose that the said Vijaylaxmi is cousin sister of the petitioner and she was declared to be from Mannerwarlu Scheduled Tribe. Considering the unreported judgment of a Division Bench in her favour i.e. in Writ Petition No. 471 of 1985 decided on 15th October, 1985, wherein the claim of Vijaylaxmi to be from Mannerwarlu tribe was clearly established before the committee and the High Court had confirmed the said claim of Vijaylaxmi to be from Mannerwarlu tribe and applying the said ruling to the facts of the case, the authorities below ought to have accepted the claim of the petitioner. Attention was also drawn to the decision of the authorities in the matter of Sudhirkumar Poshette wherein the authorities had adopted a procedure whereby the reliance was placed on the declaration of caste of the relatives and it was accepted to be a cogent evidence in support of the claim of the claimants and therefore there was no justification to adopt a totally different approach in the case of the petitioner. If the authority were to adopt the same procedure, the evidence on record sufficiently establish the petitioner to be from Mannerwarlu tribe. Reliance is also placed in the decision of Abhay Shrawanji Parate Vs. State of Maharashtra and Others, in support of the contention that the authorities ought to have given due importance to the caste certificates and the affidavits of the blood relatives placed on record by the petitioner.

6. The learned Advocate for the respondents, on the other hand, drew attention to Rules 26.3 and 26.4 of the Secondary Schools Code and submitted that the procedure to be adopted in case of any change to be made in the school records pertaining to the name and caste having prescribed under the said Rules and the same procedure having not been followed in the present case, no importance can be given to the changes brought about in the school records in relation to the caste and surname of the petitioner and what is to be considered is the initial entry in the school records and the authorities having done so, no fault can be found with the impugned order. Attention was also drawn to a Government Resolution dated 15th June, 1995 issued by the Government of Maharashtra wherein the Mannerwar has been declared as Special Backward Class and that Mannerwar is totally different caste from Mannerwarlu tribe. In that connection

the learned Advocate also referred to a letter dated 2-1-1986 issued by the Head Master of the concerned school to the Committee wherein it was disclosed that the changes in the school records in relation to the surname and caste of the petitioner were carried out at the instance of the guardian of the petitioner. Accordingly the learned Advocate for the respondent, therefore, submitted that the changes in the school records were not carried out in accordance with the provisions of law. Reliance is placed in the decision of a Division Bench of this Court in the matter of *Rajesh Yadavrao Shankpale Vs. State of Maharashtra and Others*, and it is argued that the Court while exercising jurisdiction under Article 226 of the Constitution of India should not interfere in the orders passed by the authorities below as if it is sitting as a Court of appeal. Considering the fact that there has been no explanation whatsoever put forth by the petitioner as regards the cause and circumstances in which the changes were brought about in the school records, no importance can be given to the other evidence placed on record in the form of caste certificates and affidavits of the persons who are said to be the blood relations of the petitioner and therefore according to the learned Advocate, there is no case made out for interference in the impugned order.

7. It is not in dispute that in the school records initially disclosed the name of the petitioner to be Sopan Marutirao Mali and as belonging to Mannerwar caste and that the said records were subsequently changed to say that the petitioner's name to be Sopan Maruti Pottulwar and as belonging to Mannerwarlu tribe. As rightly observed by the authorities below there is absolutely no explanation placed on record either before the Scrutiny Committee or before the Divisional Commissioner as to the cause and circumstances in which the said changes were brought about by the petitioner in the said school records. The Head Master of the school has clearly clarified to the Scrutiny Committee in his letter dated 2-1-1986 that the changes were carried out at the request of the guardian of the petitioner. Rule 26.3 of the Secondary Schools Code provides that no alteration in the date of birth or other entries in the General Register shall be permitted without the previous permission of the appropriate authority. When such an alteration is made on the strength of the written order of the said authority, an entry to that effect should be made in the remarks column of the General Register by writing the number and date of the order of the said authority. The written order should be preserved as permanent record. Rule 26.4 provides that applications for change of date of birth, caste, etc. in the General Register should be entertained only on behalf of a pupil, who is attending the school. The procedure to be followed in this respect is indicated in Appendix VI annexed to the said Rules. Clause 3 of the said Appendix VI clearly provides that no change in the date of birth as entered in the school record shall be allowed after the pupil has left the school. Further, the fact that such change should not be made after the student has left the institution is also clear from the Circular issued by the Education Department on 23rd December 1966. It was sought to be argued on behalf of the petitioner that said Code applies to the secondary schools and since the petitioner was studying in a primary school whatever changes those

have been brought about in the records are from the primary school and therefore the provisions contained in Rules 26.3 and 26.4 of the Secondary Schools Code would not be applicable. The petitioner, however, was not able to point out any other provisions of law which would apply to the changes which can be brought about in the primary schools records. Undisputedly there was no other Code specifically prescribing the procedure to be followed by primary schools at the relevant time. Being so certainly though the provisions of the Secondary Schools Code were applicable to the secondary school at the relevant time, the principle behind the said provisions were certainly applicable to the procedure to be followed in the case of changes in the school record of the primary schools. It cannot be disputed that the provisions of law contained in Rules 26.3 and 26.4 merely codify the principles of natural justice, and the rules of discipline in order to have legal sanctity for the records maintained by the school authorities. Viewed from this angle, therefore, it cannot be said that the records of the primary schools could have been changed at the sweet will of the guardians of the students. Certainly, the petitioner has not been able to justify even before this Court in the writ petition as to the cause and circumstances under which the said changes were brought about in the school records in relation to the surname and caste of the petitioner. In the absence of any explanation in that regard, no fault can be found with the authorities below in disbelieving the claim of the petitioner that he belongs to Mannerwarlu tribe and not Mannerwar. The initial record in relation to the surname and the caste of the petitioner clearly speaks to the contrary of his claim.

8. The finding of the authorities below as regards the other evidence on record is that the materials do not establish that the affidavits and certificates of the persons placed on record are really of the blood relations of the petitioner. In that connection the learned Advocate for the petitioner drew my attention to the family tree of the petitioner, a copy of which is placed on record at page 102 of the petition. The contents of the family tree disclose the names of the persons stated to be father, grand father, his brothers and sisters and other successors. However, apart from the said family tree as alleged by the petitioner and placed on record, there is nothing on record to establish the truthfulness of the contents of the said family tree as well as inter se relationship between the persons whose names figure in the said list of family tree. It is not a mere claim by the petitioner that Irwantrao was grand father of the petitioner or that Chandrabai Yallappa Kattewar was sister of Irwantrao or that Vijaylaxmi Kishanrao is the grand daughter of Chandrabai that was sufficient but the same should have been corroborated by some other evidence in the form of birth certificate or marriage certificate or some other such documents. In the absence of any such documentary evidence in that regard, no fault can be found with the findings of the authorities below to the effect that the petitioner has failed to establish the relationship with the persons whose certificates and affidavits had been filed by the petitioner.

9. The decision sought to be relied upon by the petitioner in the matter of Abhay

Shrawanji Parate (supra) is of no assistance to the petitioner. That was a case wherein the birth register of the petitioner disclosed his caste to be Koshti, when admittedly Koshti was not a caste but a profession. In the background of the said facts, it was necessary to consider all other evidence on record which the authorities had failed to do and in that connection this Court had held that various other documents placed on record by the petitioner therein were establishing his claim regarding the caste to which he was claiming to be belonging to.

10. The decision of a Division Bench in the matter of Rajesh Yadavrao Shankapale (supra), after referring to various decisions of the Apex Court, has observed that the authorities after due consideration of the evidence having arrived at a finding regarding the caste, claim of the parties, the Courts under Article 226 of the Constitution should not interfere as it is not a Court of Appeal.

11. The contention that in some other cases the authorities have placed reliance on the judgment of the relations which are even confirmed by the High Court and based on such judgment the claims were accepted can be of no assistance to the petitioner. Each case has to be decided on the facts of a particular case and the evidence produced.

12. Considering the fact that the petitioner has not been able to establish his claim with cogent evidence in the matter, the authorities have rejected his claim; there is no scope for interference in the impugned orders and therefore the petition fails. Rule is discharged with no order as to costs.