

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders

WRIT PETITION NO. 3655 OF 2014

MIRZA SHAFIQ JAVEDBEG

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr.Imale Ramesh R.

AGP for Respondents/State: Mr.V.H. Dighe.

Advocate for Respondents : Mr.Nangare Prashant R. for
R/2, Mr.Choudhary D.J. for R/5

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CORAM : S.S. SHINDE & P.R. BORA, JJ.

Dated: MARCH 26, 2015

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Heard.

2 A limited grievance raised in this petition is that the application filed by the petitioner for correction of his caste has been rejected on the ground that the petitioner has already left the school. According to the learned Counsel for the petitioner, the application of the petitioner should not have been rejected simply on the ground that the petitioner has left the school. In support of his contention, he places reliance on the judgment of this Court in case of **Shaikh Shafi Ahmed**

Khadarsab vs State of Maharashtra and others¹, and submits that the ratio laid down in the said case is squarely applicable in the facts of this case.

3 The learned Counsel appearing for the respondents vehemently opposed the prayer of the petitioner and submitted that the petition may be dismissed.

4 We have heard the learned Counsel for the parties, perused the grounds taken in the petition, annexures thereto including the impugned order passed by the authority and the judgment of this Court in case of ***Shaikh Shafi Ahmed Khadarsab*** (supra). This Court while considering the similar fact situation, referring the provisions of Para 26.4 of the Secondary Schools Code in para 12 of the judgment, held thus:

“12. 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

1 2012(5) Mh.L.J.36;

change the respondent No.2 would have to be satisfied about the merits of the case and the *bona fides* of the petitioner.”

5 In the light of the discussion herein above and in particular, the observations of this Court in para 12 of the judgment in case of **Shaikh Shafi Ahmed Khadarsab** (supra), we are of the opinion that the application of the petitioner should not have been rejected only on the ground that the petitioner has left the school. It is open for the authority concerned to consider the application in the light of the provision of Para 26.4 of the S.S. Code and give reasons while accepting or rejecting the prayer of the petitioner.

6 In that view of the matter, the impugned communication dated 6.12.2013 at Exh.E - page 21 of the compilation of petition is set aside. The application of the petitioner is restored to its original file. The respondent No.2 – Education Officer is directed to decide the application of the petitioner afresh in the light of above mentioned provisions of the S.S. Code, as expeditiously as possible and preferably within a period of three months from today, on its own merits. Petition stands disposed of.

(P.R. BORA,, J)

(S.S. SHINDE, J)