

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2959/2014

(UMASHANKAR KASHIRAM DAHERIYA **VERSUS** DIVISIONAL CASTE CERTIFICATE SCRUTINY
 COMMITTEE & OTHERS)

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

Court's or Judge's orders

Shri S.R. Narnaware, counsel for the petitioner.
 Shri N.R. Rode, A.G.P. for the R-1.
 Shri P.B. Patil, counsel for the R-2 & 3.

CORAM : SMT. VASANTI A. NAIK AND
PRASANNA B. VARALE, JJ.

DATE : JULY 3, 2015.

By this petition, the petitioner seeks a direction to the respondent no.1-Scrutiny Committee to accept the caste claim of the petitioner for verification and verify the same in accordance with law. The petitioner also seeks the protection of his education in the Bachelor of Technology course till his caste claim is decided.

The petitioner claims to have been born and brought up in Rajur, Tahsil Wani, District Yavatmal in the State of Maharashtra. After completing his schooling, the petitioner applied for a caste certificate to the Sub-Divisional Magistrate, Wani. On 13.02.2006, the Sub-Divisional Magistrate, Wani, granted the certificate to the petitioner of 'Mehara' Scheduled Caste to which the petitioner claims to belong. The petitioner secured admission in the Bachelor of Technology (Chemical Engineering Degree Course) in 2012 on the basis of the caste certificate on a seat earmarked for the Scheduled Castes. The caste claim of the petitioner was sent to the respondent no.1-Scrutiny Committee for verification. The respondent no.1-

Scrutiny Committee, however, refused to verify the caste claim of the petitioner on the ground that the petitioner is a 'migrant' and is not entitled to seek the benefits of 'Mehara' Scheduled Caste in the State of Maharashtra. The refusal on the part of the respondent no.1-Scrutiny Committee to verify the caste claim of the petitioner is impugned by the petitioner in the instant petition.

Shri Narnaware, the learned counsel for the petitioner, submitted that though the forefathers of the petitioner were residents of Chhindwara district in Madhya Pradesh, the petitioner was born and brought up in Rajur, Taluka Wani, District Yavatmal. It is stated that the petitioner was born on 29.05.1993 at Rajur in Wani Taluka. It is stated that the Sub-Divisional Magistrate, Wani, therefore, rightly granted the caste certificate to the petitioner. It is stated that the case of the petitioner stands covered by the judgment of the Hon'ble Supreme Court in the case of *Sudhakar Vitthal Kumbhare Versus State of Maharashtra & Others*, reported in **2004(4) Mh.L.J. 784**. It is stated that in yet another decision of this Court reported in **2013(5) Mh.L.J. 946** (*Bharat s/o Bhimrao Malakwade Versus Divisional Caste Certificate Scrutiny Committee No.3, Nagpur & another*), this Court had held that the petitioner therein was entitled to the benefits in the State of Maharashtra as the ancestors of the petitioner were permanently residing in Nagpur and Chhindwara. It is stated that the Scrutiny Committee has no authority to refuse to verify the caste certificate issued by a competent authority within the jurisdiction of the scrutiny committee. It is submitted that in view of the proviso to Rule 14 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward

Category (Regulation of Issuance and Verification of) Rules, 2012, a caste certificate issued to a migrant from any other State cannot be verified by a Caste Scrutiny Committee in the State of Maharashtra. It is submitted that the caste certificate is not issued to the petitioner by some other State but, is issued by the Sub-Divisional Magistrate, Wani.

Shri Rode, the learned Assistant Government Pleader appearing on behalf of the respondent no.1-Scrutiny Committee, submitted that the Scrutiny Committee is not obliged to verify the caste claim of the petitioner as the petitioner is a migrant. It is stated by relying on the provisions of Rule 3 of the rules of 2012 that a competent authority is entitled to issue a caste certificate to an applicant, who is a permanent resident of the concerned area on the deemed date for which the competent authority is designated or appointed by the Government. It is stated that in respect of an applicant, who is born after the deemed date, the place of ordinary residence for the purpose of issuance of the caste certificate shall be the place of permanent residence of his father, grandfather or great grandfather. The learned Assistant Government Pleader relied on the provisions of Rule 2(e) of the Rules of 2012 to state that the deemed date is 10.08.1950, i.e. the date of the Presidential Order for Scheduled Castes. It is submitted that admittedly, the forefathers of the petitioner were the permanent residents of Chhindwara and the Sub-Divisional Magistrate, Wani was not empowered to issue the caste certificate in favour of the petitioner. It is submitted that the issuance of the caste certificate in favour of the petitioner by the Sub-Divisional Magistrate, Wani is bad in law as the petitioner was born on 29.05.1993 and his forefathers were not permanent residents of Rajur, Wani Tahsil. The learned Assistant Government Pleader

relied on the provisions of Rule 6(1)(c) of the Rules of 2012 to state that a caste certificate holder migrating to the State of Maharashtra from the State of his origin for the purpose of seeking education, employment, etc. would be deemed to be a person belonging to the reserved castes of the State of his origin and may be entitled to derive the benefits from the State of his origin and not from the State of Maharashtra. It is submitted that the Full Bench of this Court has held in the judgment reported in **2010(2) Mh.L.J. 904** (*Shweta Santalal Lal Versus State of Maharashtra & Others*) that a migrant belonging to a Scheduled Caste, who was not an ordinary resident, as on 10.08.1950 in the area that now constitutes the State of Maharashtra would not be entitled to the benefits of reservation as a Scheduled Caste in the State of Maharashtra. It is submitted that the Full Bench has observed that such migrants and their progeny will continue to get the benefits of reservation in the State of their origin. It is stated that the Full Bench has considered the law laid down by the Hon'ble Supreme Court in the case of *Sudhakar Vitthal Kumbhare Versus State of Maharashtra & Others*, reported in **2004(4) Mh.L.J. 784** while recording the aforesaid finding. It is stated that the Full Bench rightly considered that in the case of *Sudhakar Vitthal* (Supra), the Hon'ble Supreme Court had no occasion to consider the Rules of 2003 which were then in force and which are akin to the rules of 2012. It is submitted that the judgment reported in **2013(5) Mh.L.J. 946** (*Bharat s/o Bhimrao Malakwade Versus Divisional Caste Certificate Scrutiny Committee No.3, Nagpur & another*) is distinguishable on facts and cannot be made applicable to the facts of this case. It is stated that in the judgment reported in **2013(5) Mh.L.J. 946** (*Bharat s/o Bhimrao Malakwade Versus Divisional Caste Certificate Scrutiny*

Committee No.3, Nagpur & another), the ancestors were both from Nagpur and Chhindwara and in the peculiar facts of that case, this Court had held that the petitioner therein was entitled to the benefits meant for the Scheduled Castes in the State of Maharashtra. It is submitted that Chhindwara was not a part of the State of Maharashtra before the reorganization of the States and is also not the part of the State of Maharashtra after the reorganization of the States. It is submitted that the reliance placed by the counsel for the petitioner on the judgment in the case of Sudhakar Vitthal and **2013(5) Mh.L.J. 946** (*Bharat s/o Bhimrao Malakwade Versus Divisional Caste Certificate Scrutiny Committee No.3, Nagpur & another*) is ill founded. The learned Assistant Government Pleader sought for the dismissal of the writ petition.

Shri Patil, the learned counsel for the respondent nos.2 and 3, also relied on the judgment of the Full Bench and sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties, it appears that the case stands fully covered against the petitioner by the judgment of the Full Bench reported in **2010(2) Mh.L.J. 904** (*Shweta Santalal Lal Versus State of Maharashtra & Others*). It is clear from the provisions of Rule 3 and 6(1)(c) of the Rules of 2012 that the Scrutiny Committee has rightly refused to verify the caste claim of the petitioner. The provisions of Rule 3 of the Rules of 2012 and the provisions of rule 6(1)(c) are read thus-----

“3 : Conditions of residence for issuance of Caste Certificate.-

The Competent Authority may issue a Caste Certificate to the applicant who is a permanent resident of the concerned area, on

deemed date for which the Competent Authority is designated or appointed, by the Government, by notification published under clause (b) of section 2 of the Act, in the Official Gazette.

In case of the applicant, who is born after deemed date, the place of ordinary residence for the purpose of issuance of Caste Certificate shall be the place of permanent residence of his father or grandfather or great grandfather on deemed date.

Explanation.- In case of migration within the State of Maharashtra, the applicant shall apply for Caste Certificate to the concerned Competent Authority, within whose jurisdiction their fore-fathers were residing. This provision is specifically made so as to facilitate the Competent Authority to make proper, objective and due inquiry, prior to issuance of Caste Certificate.”

“6 : Issuance of Caste Certificate to migrated persons.-

(1)

(a)

(b)

(c) A Caste Certificate holder who has migrated to the State of Maharashtra from the State of his origin for the purpose of seeking education, employment, etc., may be deemed to be the person belonging to Scheduled Caste/ Scheduled Caste converts to Buddhism/ De-notified Tribe (Vimukta Jati)/Nomadic Tribe/Other Backward Class or Special Backward Category as the case may be, of the State of his origin and may be entitled to derive benefits from the State of his origin and Union Government but, he shall not derive any benefit from the State of Maharashtra.

Explanation.- For the purpose of sub-rule (1), “migrant from other State” means-

(i) a person who has migrated to Maharashtra State from any other State or Union Territory on or after the “**deemed date**”.

(ii) a person whose Caste is Scheduled Caste/ Scheduled Caste converts to Buddhism/De-notified Tribe (Vimukta Jatis)/Nomadic Tribe/Other Backward Class or Special Backward Category in his original State, but not in Maharashtra State; and the person whose Caste is Scheduled Caste/ Scheduled Caste converts to Buddhism/ De-notified Tribe (Vimukta Jati)/Nomadic Tribe/ Other Backward Class or Special Backward Category in Maharashtra State as well as in his original State having his ordinary residence on “deemed date” has been in the State or Union Territory other than the Maharashtra State would both be treated as migrants.”

It is clear from the provisions of Rule 3 that a competent authority is entitled to issue a caste certificate to the applicant who is a permanent resident of the concerned area, i.e. Wani in this case, as the Sub-Divisional Magistrate, Wani has issued the certificate in favour of the petitioner on the deemed date. Deemed Date is defined in Rule 2(e) of the Rules of 2012. As per Rule 2(e), deemed date means 10.08.1950, in case of persons belonging to the Scheduled Castes. The petitioner is claiming the benefits meant for the Scheduled Castes. Hence, the deemed date in this case would be 10.08.1950. The Sub-Divisional Magistrate, Wani was entitled to issue a caste certificate only to an applicant, who was a permanent resident of Wani area on 10.08.1950. Admittedly, the petitioner could not have resided in Wani on the deemed date, i.e. on 10.08.1950 as he was born on 29.05.1993. As per the sub-Rule 2 of Rule 3, for the applicants who are born after the due date,

the place of ordinary residence for the purpose of issuance of caste certificate would be the place of permanent residence of his father, grandfather or great grandfather. In the instant case, since the petitioner was born after the deemed date, the question of considering the place of ordinary residence of his forefathers is required to be considered. Admittedly, the father and grandfather of the petitioner were the residents of Chhindwara, which was not a part of State of Maharashtra before the reorganization of the States and is also not a part of the State of Maharashtra after the reorganization. We find much force in the submission made on behalf of the learned Assistant Government Pleader that the Sub-Divisional Magistrate, Wani had no jurisdiction, whatsoever in view of the clear provisions of Rule 3 of the Rules of 2012 to issue a caste certificate in favour of the petitioner. The very issuance of the caste certificate to the petitioner by the Sub-Divisional Magistrate, Wani is bad in law, being contrary to the provisions of Rule 3 of the Rules of 2012. It is also clarified by the provisions of Rule 6(1)(c) that a caste certificate holder migrating to the State of Maharashtra from the State of his origin for the purpose of seeking education, employment, etc. would be entitled to derive the benefits of the reserved castes from the State of his origin and not from the State of Maharashtra. In view of the explanation to Rule 6(1)(c), the petitioner would be a migrant. The submission made on behalf of the petitioner that since the Sub-Divisional Magistrate, Wani has issued the caste certificate in favour of the petitioner, the Scrutiny Committee must blindly, without considering the provisions of rules, verify the same, is liable to be rejected. In the circumstances of the case, we find that the Sub-Divisional Magistrate, Wani did not have jurisdiction to issue a caste

certificate to the petitioner. Since the caste certificate is wrongly issued in favour of the petitioner by the Sub-Divisional Magistrate, Wani, it would not be possible for this Court to direct the respondent no.1-Scrutiny Committee to verify the caste claim of the petitioner on the basis of the said caste certificate. It is rightly submitted on behalf of the respondents that the Hon'ble Supreme Court had no occasion to consider the relevant provisions of the Rules of 2003 and the Rules of 2012 while holding that the Scrutiny Committee should verify the eligibility of the petitioner in the State of Maharashtra. The judgment of the Hon'ble Supreme Court was considered by the Full Bench of this Court and the Full Bench has held in the judgment reported in **2010(2) Mh.L.J. 904** (*Shweta Santalal Lal Versus State of Maharashtra & Others*) that in case of a migrant belonging to a Scheduled Caste not ordinarily residing as on 10.03.1950, in the area that now constitutes the State of Maharashtra would not be entitled to the benefits of reservation to Scheduled Castes in the State of Maharashtra. It is held by the Full Bench that the 'migrants' and their progeny will continue to get the benefits of reservation in the State of their origin. While holding so, the Full Bench has relied on this judgment reported in **2009(11) Scale 278** (*Subhash Chandra & Another Versus Delhi Subordinate Services Selection Board & Others*). Since the judgment of the Full Bench is binding on us, the relief sought by the petitioner cannot be granted.

In view of the aforesaid, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE