

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.1433 OF 2016

ASHISH SUNILRAO PATIL

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr.Mane V.M.

AGP for Respondents/State : Mr.B.V.

Virdhe.

Advocate for Respondents:Mr.U.S. Mote for
R.No.2, Mr.S.N. Landge for R.No.5.

Respondent No.4 served – absent.

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CORAM:S.S.SHINDE & SANGITRAO S. PATIL, JJ.

Dated: APRIL 26, 2016

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This petition takes exception to the letter 10th March, 2016 issued by respondent No.4 – Head Master, Gandhi Vidhyalaya, Parbhani. The learned Counsel for the petitioner submits that the application filed by the petitioner for correction in date of birth in the school record ought to have been considered on merits instead of rejecting the same by respondents No.3 and 4 on the ground that the petitioner has already 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 others***¹, and submits that the ratio laid down in the said case is squarely applicable in the facts of this case.

2 The learned AGP appearing for the State and learned Counsel appearing for respondent No.2 vehemently opposed the prayer in the application. Though respondent No.4 is served, none appears for respondent No.4.

3 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

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

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."

4 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 26.3 and 26.4 of the Secondary School Code and give reasons while accepting or rejecting the prayer of the petitioner.

5 In that view of the matter, the communications dated 23rd January, 2016 and 10th 10th March, 2016 issued by respondent No.4 and also the communication issued by respondents No.2 to 4 dated 22nd

January, 2016 are quashed and set aside. The petitioner to file an application with respondent No.4 afresh within two weeks from today, accompanied with copies of the documents. Respondent No.4 is directed to accept such an application and send it with recommendation to respondent No.3 within three weeks from receipt of the same. After receipt of such application / proposal from respondent No.4, Respondent No.3 shall take decision on the said application / proposal on its own merits, keeping in view the aforesaid provisions of the Secondary School Code, as expeditiously as possible; however, within five weeks and send it to respondent No.2. Respondent No.2 to act upon such application / proposal and do the needful, as expeditiously as possible; however, within ten weeks from receipt of the same. The entire exercise to be done within twenty weeks from today.

The writ petition is allowed in the above terms and stands disposed of. Parties to act upon authenticated copy of this order.

(SANGITRAO S.PATIL, J) (S.S. SHINDE, J)