

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.7945 OF 2013**Sanjay Markas Shelke Vs. The State of Maharashtra and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.A.R.Rathod, advocate for the petitioner.
Mrs.M.A.Deshpande, Additional Government Pleader for the State.

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**
Date : 18.01.2017.

PER COURT :

1. Heard.
2. The caste claim of the petitioner as belonging to 'Mahar' Scheduled Tribe is invalidated. Aggrieved thereby, the present petition.
3. Mr.Rathod, learned counsel for the petitioner strenuously contends that the School record of the petitioner shows caste as 'Mahar'. So also in respect of cousin of the petitioner, the caste is recorded as 'Mahar'. The learned counsel submits that it was erroneous on the part of the Committee to hold the petitioner as belonging to Christian community. At no point of time, the

petitioner had converted to Christianity. There was no Baptism. Even the Vigilance has observed that there is no record showing Baptism being performed on the petitioner. The petitioner professes and follows all the traits of Mahar caste. Only on statement of wife of petitioner, the Committee has invalidated the caste claim of the petitioner. Even the father of the petitioner had never converted to Christianity. The learned counsel relies on the judgment of the Division Bench of this Court in **W.P.No.5361/2013 dated 2.8.2013 (Coram : A.H.Joshi and Sunil P. Deshmukh, JJ.)**, so also another judgment of the Division Bench of this Court in the case of **“Dipak S/o Yohan Shinde Vs. State of Maharashtra and others”** reported in **2014(5) Mh.L.J.252**. The learned counsel further submits that there is no ex-communication of the family from 'Mahar' caste.

4. The learned Additional Government Pleader submits that evidence on record clearly establishes the petitioner professing Christianity religion. The Committee has rightly considered the same.

5. We have gone through the judgment delivered by the Committee, so also the documents.

6. It is true that only if in the house of petitioner, the photo of Lord Jesus exist, the same would not be sufficient to dub petitioner professing Christianity religion. However, considering the evidence

on record, more particularly, the statement of the wife of the petitioner, it would not be possible to accept the contention of the petitioner. It has been specifically deposed by the wife of the petitioner that her father-in-law died 4/5 years back and the last rites were performed as per Christian ritual and he is buried at Gondhavani. The marriage of the petitioner and his wife has taken place in the year 2002 at Bhingar at Saint John Church as per Christian tradition. The brothers of the petitioner namely Suresh and Yakob are no more and their last rites were performed as per Christian ritual. She further states that her husband i.e. the petitioner has told her that Baptism of the petitioner is performed in his childhood. Their marriage is performed as per Christian traditions. They visit the Church.

7. The wife of the petitioner herself has stated in the statement before the Vigilance that the petitioner has undergone Baptism during his childhood.

8. Considering the aforesaid evidence, no other view would be possible apart from the view that the petitioner is professing Christianity religion. As such can not come within the ambit of 'Mahar' Scheduled Caste.

9. Though we have confirmed the judgment of the Committee, still, it would appear that the petitioner was appointed as a Peon in the year 1994 from SC category. It does not appear that the

petitioner has obtained the caste certificate by playing fraud or by misrepresentation. In view of the judgment of the Full Bench of this Court in the case of **“Arun S/o Vishwanath Sonone Vs. State of Maharashtra and others”** reported in 2015(1) Mh.L.J.457, the petitioner would be entitled for protection in service.

10. In light of the above, we pass the following order :

- a) The Judgment of the Committee is upheld, however, services of the petitioner are protected. The petitioner shall not be terminated from the service nor any adverse action be taken against the petitioner only on the ground that his caste claim is invalidated. Apart from being appointed from Scheduled Caste category, no promotional benefits have been given to the petitioner as is contended. The petitioner hence-forth shall not claim benefit of reservation in employment or in any walk of life.
- b) The entry of this order be taken in service book of the petitioner.
- c) The Writ Petition is accordingly disposed of with aforesaid observations. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.18.01.2017.

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