

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11057 OF 2016

Kanchan Shahu Mirpagar,
Age: 43 Years, Occu.: Service,
R/o.: Bishop Loid Colony,
Behind Akashwani Center,
Savadi, District: Ahmednagar

.. **Petitioner**

Versus

1. Scheduled Caste, Vimukt Jati,
Nomadic Tribes and other Backward Class
and Special Backward Class, Caste Certificate
Scrutiny Committee No. 1, Nashik Division, Nashik,
Through its Chairman and Member Secretary

2. The State of Maharashtra,
Under Secretary,
Social Welfare, Cultural Affairs,
Sports and Tourism Department,
Mumbai – 400 032

.. **Respondents**

Shri L. V. Sangeet, Advocate for the Petitioner.
Shri P. S. Patil, Addl. G. P. for Respondents.

CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.

Reserved for Orders on : **16th April, 2018**
Order pronounced on : **4th May, 2018**

ORDER (Per S. V. Gangapurwala, J.) :

1. The caste claim of the petitioner as belonging to 'Mahar', Scheduled Caste is invalidated, aggrieved thereby the present writ petition.

2. Mr. Sangeet, learned counsel for the petitioner states that, the school record of the petitioner's two cousin grandfather records caste as 'Hindu Mahar'. The Service Book of the petitioner records caste as 'Mahar'. The school record of the real brother of the petitioner also records caste as 'Mahar'. The said entry is of the year – 1962. The *inam land* given to the petitioner's grandfather shows the caste 'Mahar'. Only because father of the petitioner is illiterate and on the basis of stray statement that Suresh had died and he was buried instead of cremated would not show that the petitioner professes Christian religion. The petitioner is Mahar and observes all the rituals of 'Mahar' caste. The learned counsel submits that, even baptism has not taken place. In such a case, only because the committee found the photo of Jesus Christ on the wall of the petitioner's father's house would not be sufficient to conclude that the

petitioner has relinquished her original caste. The learned counsel relies on the Judgment in Writ Petitioner No. 11615 of 2014 dated 15th June, 2016, and in Writ Petition No. 1403 of 2016 dated 10th June, 2016.

3. Learned Additional Government Pleader submits that, one of the school record of the petitioner records her caste as 'Christian'. The names of the relatives of the petitioner are those appearing in Christian community. Even the rituals observed are those followed in Christian community. Only because record of baptism is absent, it cannot be concluded that petitioner is 'Mahar'. The learned Additional Government Pleader relies on the Judgment of the Apex Court in a case of **K. P. Manu Vs. Chairman, Scrutiny Committee for Verification of Community Certificate** reported in **2015 (4) SCC 1**, and also in a case of **Mrs. Valsamma Paul Vs. Cochin University and others** reported in **1997 (1) Mh. L. J. 618**.

4. We have gone through the documents, the Judgment and the Report of the Vigilance. The petitioner's father had two sons and five daughters. The names of sons and daughters are those

appearing in Hindu community and not as appearing in Christian community. The names of the sons are Ramesh, Suresh and the daughters names are Sulbha, Sunita, Nita, Manda and Kanchan. Of course, the names of the some of the brothers of the petitioner's father is Christian. It is stated that the Revenue Record of great grandfather of the petitioner records about the *inam land* being given to Mahar. The same appears to be a very old record. The school record of the real brother of the petitioner of the year – 1962 records caste as 'Mahar'. The same is position with regard to the school record of the cousin grandfather of the petitioner, which are of the year – 1933 and 1948. One school record of the petitioner records caste as Christian and in the statement of the father of the petitioner it has come that one of his son who has died was buried. The explanation of the petitioner is that, the same is recorded in marathi and instead of 'dahan' the same is recorded as 'dafan'.

5. No doubt, the old record supports the case of the petitioner. But in the home enquiry made and the statement given in respect of the last rites performed on one son who is dead, the

committee concluded that the petitioner belongs to Christian community. Of course, in the entry of the school record of petitioner the caste is shown as Christian.

6. It appears also from the statement that the husband of the petitioner is Christian, however, relevant would be the caste of the petitioner. What are the traits being observed by the petitioner is relevant. At least in such cases, the committee should perform Affinity Test and could have also called for the record of the marriage of the petitioner that would throw light. Admittedly, there is no record of baptism in the Church as stated by the vigilance in the report.

7. In view of that, and in the facts and circumstances of the case, it would be necessary that the committee conducts Affinity Test and then arrive at a conclusion.

8. In view of that, we pass the following order -

ORDER

- I] The impugned order is quashed and set aside.
- II] The parties are relegated before the committee.

III] The committee shall conduct the Affinity Test and thereafter decide the proceeding afresh.

IV] The petitioner is entitled to place on record additional evidence, if she so desires.

V] The petitioner shall appear before the committee on 4th June, 2018.

VI] The committee shall decide the proceeding afresh, in light of the observations made above, expeditiously and preferably within four months from the date of appearance.

9. Writ Petition, accordingly stands disposed of. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

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