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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 193 OF 2016
WITH
CIVIL APPLICATION NO. 1986 OF 2018
IN
WRIT PETITION NO. 193 OF 2016

Ravindra Sidram Rayamane .. Petitioner/Applicant

Vs.

Council of Education's, Kolhapur
& ors.

.. Respondents

.....

Mr. Anand Boyas I/b. Mr. A.V. Sakholkar for the petitioner/
applicant.

Mr. S.B. Kalel, AGP for respondent Nos. 3 & 4.

.....

**CORAM : B.R.GAVAI &
M.S. KARNIK, JJ.**

DATE : 17th OCTOBER, 2018

JUDGMENT (PER M.S.KARNIK, J.) :-

Rule. Rule is made returnable forthwith.

2. Heard by consent of the parties.

3. Taking exception to the order dated 3/2/2015 passed by the respondent No. 4 – Divisional Caste Scrutiny Committee No.2, Dr. Babasaheb Ambedkar Samajik Nyaya Bhavan, Kolhapur, the petitioner has approached this Court under Article 226 of the Constitution of India, praying for quashing and setting aside the impugned order invalidating the Petitioner's caste claim.

4. After completing his Master of Philosophy (M.Phil.) in 1989, the petitioner joined the services of the respondent No.2 as Lecturer in History subject from Scheduled Caste category. At the time of joining the service, the petitioner submitted his caste certificate dated 3rd March, 2003 as belonging to 'Chambhar' Caste which is recognized as Scheduled Caste. A proposal for scrutiny of the caste certificate of the petitioner was sent on 23/1/2004. As no decision was taken for a long time, the respondent No.2- College has submitted a fresh proposal to the respondent No. 4 – Committee on 20/7/2013.

5. The respondent No.4 – Committee called upon the petitioner to file appropriate affidavit in support of his caste claim. The petitioner submitted an affidavit on 18/11/2014 to the office of the respondent No.4 – Committee stating therein the reasons for not declaring him as migrant though he is resident of Karnataka. According to him, he falls in the major affected order area of Nipani and as such he could not be denied the reservation facilities available in Maharashtra. It is the petitioner's contention that he was never called for personal hearing along with the documents in support of his caste claim. However, by the impugned order, the respondent No.4-Committee held that the caste certificate issued to the migrants and the certificate issued by the competent authority other than Maharashtra State cannot be scrutinized by the Scrutiny Committee. The claim of the petitioner as belonging to the scheduled caste was rejected.

6. We find that the family of the petitioner is resident

of the Maharashtra prior to 1950. The mark-sheet and passing certificate of the petitioner's father Shri Sidram Tatoba Rayamane issued by Secondary School Certificate Examination Board, Bombay State, Pune, reveals that the family was resident of the then Maharashtra State and the petitioner was residing at Nipani at the time of the creation of the State. The claim of the petitioner is thus rejected only on the ground that the petitioner is not a resident of State of Maharashtra and as such he is not entitled as scheduled caste in Maharashtra.

7. The issue is no more resintegra. The Hon'ble Apex Court in the case of **Sudhakar Vithal Kumbhare Vs. State of Maharashtra and others** reported in **(2004) 9 SCC 481** had an occasion to consider similar issue. It will be relevant to refer to the following observations of the Hon'ble Apex Court :

“.....It is one thing to say that the expression “in relation to that State” occurring in Article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one

State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in another State whose Governor has not been consulted; but it is another thing to say that when an area is dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and answered would be as to whether the members of a Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the States Reorganisation Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in the district of Chhindwara and a part of the area of Chandrapur at one point of time belonged to the same region and under the Constitution (Scheduled Tribes) Order, 1950 as it originally stood the tribe Halba/Halbi of that region may be given the same protection. In a case of this nature the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganisation might have agreed for inclusion of the said tribe Halba/Halbi as a Scheduled tribe in the State of Maharashtra having regard to the said fact in mind.”

8. It could thus be seen that the Hon'ble Apex Court has held that if prior to the reorganization of the States, the area in which a candidate originally resides and the area where he is migrated, were in the same State and if the Caste/Tribe is notified as Scheduled Caste or Scheduled Tribe in both the State, then such a candidate cannot be denied the benefit of belonging to that category.

9. Undisputely prior to the reorganization of the States, both Chikodi taluka in Belgaum district and Kolhapur were the part of State of Bombay. Only after the reorganization, Kolhapur district has come in the State of Maharashtra, whereas Chikodi taluka in Belgaum district is in the State of Karnataka. A judicial note is also taken of the fact that there is long standing agitation by the residents of Belgaum district for their inclusion in the State of Maharashtra.

10. The decision of this Court relied by the Petitioner in

the case of Kumar Hemant Mane Vs. State of Maharashtra in Writ Petition No. 1154 of 2018 squarely applies to the Petitioner's case. In that view of the matter, we find that the impugned order is liable to be quashed and set aside. Hence the following order :

ORDER

1. The Writ Petition is allowed.
2. It is held and declared that the petitioner belongs to “Chambhar” Scheduled Caste.
3. The respondent No.2 – Scrutiny Committee is directed to issue Caste Validity Certificate to the petitioner within a period of two weeks from today.
4. All consequential benefits shall follow.
5. Rule is accordingly made absolute in the above terms.

11. In view of the disposal of the Writ Petition, nothing survives in the Civil Application for consideration. Hence, Civil Application is disposed of.

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)