

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.826 OF 2019

MANOJ DIGAMBER RATHOD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.Amol S. Gandhi, Advocate for the petitioner
Mr.S.S.Dande, AGP for the respondent/State

**CORAM : PRASANNA B. VARALE &
S.M.GAVHANE, JJ.**

DATED : 26.02.2019

P.C. :-

- . Heard learned counsel for the petitioner.
2. Considering the issue raised in the petition we are of the opinion that the petition can be disposed of at the admission stage as the issue raised in the petition is no more *res integra*.
3. Brief facts are summarized in brief:
4. The petitioner was admitted some time in the year 1998 for the primary education in a school i.e. Primary Ashram School Bhokar, Tq. Bhokar, Dist. Nanded. In the admission register date of birth of the petitioner was recorded as 15.12.1992. Learned counsel then

submitted that as there were no sufficient facilities of secondary school education or the further studies, the petitioner shifted his residence from Bhokar to Nanded and was admitted in Zilla Parishad Central Primary School at Apparao Peth, Tq. Kinwat, Dist. Nanded some time in the year 2005. At the time of admission in Zilla Parishad school at Kinwat date of birth is recorded as 15.12.1992. then the petitioner took admission in Manisha Ashram Primary School at Pota (Bk) for 6th standard in the year 2006 and there also entry in the register about the date of birth of petitioner is recorded as 15.12.1992. Then the petitioner to prosecute further studies took admission at Saraswati Bhuvan High School, Naik Nagar, Nanded in the year 2007 for 9th standard and inadvertently while recording the entry in the admission register date of birth of the petitioner is recorded as 15.12.1993 instead of 15.12.1992. Learned counsel for the petitioner orally submitted that this fact missed the attention of the petitioner for quite some time, as the petitioner was prosecuting his studies at various levels. The petitioner is now prosecuting his studies at master level i.e. Master of Arts and is preparing for competitive examinations to be conducted through MPSC and while petitioner was preparing himself in the process of selection and arrangement of the documents, the

petitioner found that there is an error in the entry about the birth date in the admission documents of the year 2007. The petitioner immediately submitted an application to the Headmaster of Saraswati Bhuvan High School, Nanded to correct the date of birth of the petitioner. The Headmaster of Saraswati Bhuvan High School, Nanded advised the petitioner to submit a proper application to the Chief Executive Officer, Zilla Parishad, Nanded. Accordingly, the petitioner submitted an application to the Chief Executive Officer Zilla Parishad, Nanded. Copy of the application is placed on record at Exh.E. On submitting the application to the Chief Executive Officer, Zilla Parishad, Nanded an order was passed on 01.09.2018 under the signature of the Education Officer (Secondary), Zilla Parishad, Nanded whereby the application was disposed of assigning the reason that as the petitioner left the school after passing 10th standard examination the authority do not possess the powers to effect the entries/correct the entries under the provisions of Secondary School Code and more particularly under Rule 26.4 of the Code. Being aggrieved by this order the petitioner is before this Court. Learned counsel submitted that the Education Officer ought not to have turned down the request of the petitioner raising a hyper technical ground that too on

the backdrop of the decisions of this Court. Learned counsel for the petitioner placed heavy reliance on the judgments of this Court in the matter of Shaikh Shafi Ahmed Khadarsab Vs State of Maharashtra and ors reported in 2012(7)All.M.R. 437 as well in the matter of Swapneel S/o. Maroti Sonwale Vs State of Maharashtra and ors reported in 2014(3)All. M.R. 177. On perusal of the material placed on record and more particularly in view of the judgments of this court, in our opinion the learned counsel for the petitioner made out the case. It would be necessary for us to refer to the judgments relied by the learned counsel for the petitioner i.e. in the matter of *Shaikh Shafi Ahmed Khadarsab (supra)* and this judgment is delivered by this Court on 13.03.2012. The State Government was party to this petition. In the similar circumstances i.e. when the application was rejected raising the rider of Rule 26.4 the Division Bench of this Court was pleased to observe in paragraph Nos. 6,7,8,9,10,11 and 12 as under:

“6. The short question which arises for our determination is: "whether an application for change or correction of date of birth, name, surname, caste etc. as entered in the general register of a school cannot be entertained after the pupil has left the school?".

7. Para 26.4 of the S.S.Code, on which reliance is placed, reads as under: "26.4. Application for change or correction of date of birth, name, surname, caste etc. as entered in the General Register shall be entertained from or on behalf of a pupil who is attending a school. Such application shall not be entertained from or on behalf of a pupil, who has left the school, as the same amounts not only to a change in the entries in the General Register but also to a change in the School Leaving Certificate. However, for the purposes like an admission to another educational institution the School Leaving Certificate is relied upon as an evidence for name, surname, caste, date of birth etc., and hence in bona fide cases where wrong spelling of a word or an obvious mistake of the type mentioned in subrule 3 above is noticed any time after issue of the School Leave Certificate and the same is required to be corrected so as to be consistent with the corresponding entries in the General Register of the school or those in the School Leaving Certificate issued by the previous school, such applications shall be entertained. The procedure to be followed in such cases is laid down in Appendix Six." Undoubtedly, para 26.4 of the S.S.Code says that the application for change or correction of date of birth, name, surname, caste etc. shall not be entertained from or on

behalf of the pupil who is attending the school as the change amounts not only to a change in the entries in the general register but also amounts to a change in the school leaving certificat. In our view, the instructions contained in para 26.4 of the S.S.Code that the application for a change or a correction cannot be entertained after the pupil has left the school are directory in nature and not mandatory for the reasons indicated below.

8. Firstly, it may be noted that the S.S.Code is neither a statute nor a Rule framed under a statute. The S.S.Code contains only executive instructions. The executive instructions, of course, are required to be followed by a school for being recognised, by the department of education. Any breach of the S.S.Code can result in the withdrawal of the recognition of the school. Yet the fact remains that S.S.Code does not have a statutory force.

9. The first sentence of Para 26.4 of the S.S.Code says that an application for change or correction of date of birth, name, surname, caste etc. as entered in the General Register can be entertained from and on behalf of a pupil who is attending the school. Para 26.4 of S.S.Code thus contemplates that an application for a change of an entry in the General Registrar (of a school) is not only

permissible but is also required to be entertained. The second sentence of para 26.4 of S.S.Code says that such an application shall not be entertained from and on behalf of a pupil who has left the school as the same amounts not only to a change in the entries in the General Register but also to change in the school leaving certificate. Thus, the only reason given for not entertaining an application of change of an entry in the General Register of a school after pupil has left the school is that the change would amount to a change not only in the General Register but also a change in the school leaving certificate. The 3rd sentence of para 26.4 of the S.S.Code is an exception to the second sentence and says that in bonafide cases where wrong spelling of a word or an obvious mistake of the type mentioned in subrule 3 is noticed any time after issue of the school leaving certificate and the same is required to be corrected, so as to be consistent with the corresponding entries in the General Register of the school, or those in the school leaving certificate issued by the previous school, such an application can be entertained. This contemplates that notwithstanding the command contained in second sentence of para 26.4 of the S.S.Code that an application for correction shall not be entertained after the pupil has left the school, the application can be entertained in bonafide cases where there are obvious errors. This makes it clear that the bar

of not entertaining an application on behalf of the pupil who has left the school is not absolute and notwithstanding the bar such an application can be entertained in bonafide cases. This is a clear indication that second sentence of para 26.4 of the S.S.Code is not mandatory but only is directory.

10. We would take an illustration as to what would happen in case we hold that the bar contained in para 26.4 of the S.S.Code is mandatory. Take a case where a student after passing the 3rd standard of a school leaves the school on account of financial reasons. The school leaving certificate is issued to him after he leaves the school. After reading the school leaving certificate he notices some error in the school leaving certificate. On enquiry, he learns that the error was on account of initial entry in the General Register. If we were to hold that the Rule is mandatory an application for any correction of entry in the General Register cannot be entertained except in the cases covered by 3rd sentence of para 26.4 of the S.S.Code, the application would probably be rejected. If the very same student takes fresh admission in 4th standard after his financial position improves he would continue to be a pupil of the same school. If he then makes an application for change in the General Register, then the application would be entertained because he is still a student in the same school. Thus, in respect of same

student, the application would not be entertained in the first case and would be entertained in the second case. This would give rise to an incongruous situation.

11. For all these reasons, we hold that the instructions contained in para 26.4 of the S.S.Code that an application for change of an entry in the General Register of a school shall be entertained only on behalf of the pupil who is attending the school meaning thereby that it shall not be entertained on behalf of the pupil who has left the school, are directory and not mandatory. In our view, such an application can be entertained even after the pupil has left the school, provided the application is bonafide and the pupil is able to satisfy that the original entry in the General Register of the school is erroneous. The application can be rejected if the entry is not shown to be erroneous and wrong. It, however, cannot be rejected without it being considered on merits, only on the technical ground that the application has been made after the pupil has left the school.

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 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 bonafides of the petitioner.”

5. Needless to state that this view of the Division Bench is again reiterated in the next judgment of this Court in the matter of *Swapneel Maroti Sonwale (supra)*. This is the judgment delivered by this Court on 04.07.2013. In this petition also the State Government was party. The Division Bench by referring to the judgments of this Court in the matter of *Shaikh Shafi Ahmed Khadarsab (supra)* and another matter namely matter of *Vilas Dattatraya Ransubhe reported in 2012(1) ALL MR 89* allowed the petition. It would be useful for our purposes to refer to observation of the Division Bench in the matter of *Swapneel Maroti Sonwale (supra)* in paragraph No.7 as under.

“7. We convinced that the said issue as regards correction with reference to caste in the school leaving certificates is no longer res-integra. In light of the facts set out here-in-above and in light of the view taken by the Division Bench of this Court

in the 2 judgments (cited supra), we have no hesitation in quashing and setting aside the order of the respondent NO.2 dated 24.09.2012. The petitioners deserve to be heard, in as much as, the appropriate authorities need to follow the due procedure of Law in considering the request of the petitioners. As such, we direct the petitioners to cause their appearance before the respondent No.2 on 05.08.2013. No separate notice needs to be issued requiring the appearance of petitioners. Respondent No.2 shall decide the applications of the petitioners as expeditiously as possible, preferably within a period of 8 weeks from the date of appearance of the petitioners.”

6. It may not be out of place to state that in the present matter the petitioner has submitted a detail application to the Chief Executive Officer assigning the reason prompting him to approach the authority. The authority was not prevented to assess the application if need by giving an opportunity of hearing to the petitioner but without undertaking such an exercise the application is rejected only raising rider of Rule 26.4.

7. In view of this fact only unescapable conclusion can be drawn is that the order impugned in this petition is unsustainable. The order dated 01.09.2018 is quashed and set aside. The petitioner is permitted to approach

respondent No.2 either with the copy of the earlier application submitted to the Chief Executive Officer or in case the Education Officer (Secondary) requires a fresh application for assessment of the merit, the Education Officer may accordingly direct the petitioner to submit fresh application and to pass appropriate orders on the application within three weeks from today.

8. Before party we feel it appropriate to apprise respondent Nos.1 and 2 that though this very issue is addressed by this Court with the authoritative decision way back in the year 2012 and thereafter this Court reiterated this view in 2013 in two matters namely Vilas Dattatraya Ransubhe (supra) and Swapneel Maroti Sonwale (supra). Why the State authorities are again and again are rejecting these applications with mechanical approach and raising rider of Rule 26.4.

9. We direct the learned AGP to inform the order of this Court in this petition alongwith the copy of the judgment of this court in the matter of Shaikh Shafi Ahmed Khadarsab (supra).

10. We hope and trust that at least hereinafter the better sense would prevail on the authorities and the

authorities would prevent themselves from a mere instance on technical riders and hyper technical approach.

11. With the above observation, the petition is disposed of.

[S.M.GAVHANE, J.]

[PRASANNA B. VARALE, J.]