

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2463 OF 2019

Anil Kailas Jadhav
Age 32 years, occ. Labour
R/o Plot No. 64, Naik Nagar
Beed Bypass
Aurangabad
Tq. & Dist. Aurangabad

Petitioner

Versus

1. State of Maharashtra
Through its Secretary for Primary Education
Mantralaya, Mumbai.
2. Education Officer (Primary)
Zilla Parishad, Education Department
Nanded.
3. Head Master
Zilla Parishad Primary School
Bhosi, Tq. Bhokar
Dist. Nanded.
Respondents

Respondents

WITH
WRIT PETITION NO. 2478 OF 2019

Santosh Kailas Jadhav
Age 29 years, occ. Labour
R/o Plot No. 64, Naik Nagar
Beed Bypass
Aurangabad
Tq. & Dist. Aurangabad

Petitioner

Versus

1. State of Maharashtra

Through its Secretary for Primary Education
Mantralaya, Mumbai.

2. Education Officer (Primary)
Zilla Parishad, Education Department
Nanded.
3. Head Master
Zilla Parishad Primary School
Sinchan Colony, Bhosi, Tq. Bhokar
Dist. Nanded.
Respondents

Respondents

Shri Mahesh K. Bhosale, Advocate for the petitioners.
Mrs. V.S. Choudhary, AGP for respondent No. 1.
Shri Santosh B. Pulkundwar, Advocate for respondent No. 2.
Shri A.M. Solak, Advocate for respondent No. 3.

**CORAM : UJJAL BHUYAN &
M.G. SEWLIKAR, JJ.**

DATE : 7th April, 2021.

JUDGMENT : (Per M.G. Sewlikar, J.)

1. Rule. Rule made returnable forthwith.
2. By consent, heard both the sides for final disposal at admission stage.
3. Both these writ petitions are being disposed of by common order as a common question of law and fact is involved.

4. Facts giving rise to these two writ petitions are as under :-

WRIT PETITION NO. 2463/2019

It is petitioner's case that he did his schooling from Mahatma Phule High School, Nanded. He left the school on account of passing matriculation on 31.05.2002. At the time of admission in the school, inadvertently, caste of petitioner was mentioned as 'Gadi Lohar' whereas his caste is 'Carpenter'. Father of petitioner did his education mentioning his caste as 'Carpenter' and for proof of that he has produced a bonafide certificate and a School Leaving Certificate of his father mentioning his caste as 'Sutar'. Executive Magistrate, Kannad, has issued caste certificate in the name of the mother of petitioner, Sulochanabai Kantarao Jadhav, mentioning therein her caste as 'Sutar'. When petitioner realised this mistake, he approached respondent No. 3-school for making necessary correction in his caste. Respondent No. 3 by communication dated 30.01.2019, communicated to petitioner that in terms of Rule 26.4, if correction is required to be made, it can be corrected whilst the student is/was taking education. Since petitioner is alumni, his application cannot

be considered. This communication is impugned in this writ petition.

WRIT PETITION NO. 2478/2019

Similar are the facts of Writ Petition No. 2478/2019 as it appears that petitioner in Writ Petition No. 2478/2019 is the brother of petitioner in Writ Petition No. 2463/2019. In this writ petition also, it is contended that caste of petitioner has been wrongly mentioned in School Leaving Certificate issued by respondent No. 3 as 'Gadi Lohar' whereas his caste is 'Sutar'. He has also annexed bonafide certificate and a School Leaving Certificate of his father mentioning caste as 'Sutar'. He has also annexed caste certificate issued by Executive Magistrate, Kannad in favour of his mother Sulochana Jadhav mentioning her caste as 'Sutar'.

5. None of the respondents filed their affidavit in reply.

6. Heard Shri Bhosale, learned counsel for petitioners in both the writ petitions, Mrs. V.S. Choudhary, learned AGP for respondent No. 1, Shri Santosh Pulkundwar, learned counsel for respondent No. 2 and Mr. Solak, learned counsel for respondent No. 3.

7. Shri Bhosale, learned counsel for petitioners submitted that caste of petitioners has been wrongly mentioned as 'Gadi Lohar' in the School Leaving Certificate issued by respondent No. 3. He argued that petitioners tendered sufficient evidence before respondent No. 3 to indicate that their real caste was 'Sutar' and not 'Gadi Lohar'. He argued that School Leaving Certificate of the father of petitioners and the caste certificate issued by Executive Magistrate, Kannad, in favour of mother of petitioners indicate their caste as 'Sutar'. He submitted that this evidence was sufficient for respondent No. 3 to make necessary correction but respondent No. 3 refused to carry out correction only on technical ground that petitioners are alumni and, therefore, erroneously rejected the applications of both petitioners. He submitted that this Court in two cases has taken a view that Education Officer has power to carry out corrections if there are obvious mistakes. He placed reliance in the cases of Janabai d/o Himmatrao Thakur Vs. State of Maharashtra and others reported in **2019(6) Mh.L.J. 769 (F.B.)** and Shaikh Shafi Ahmed Khadarsab Vs. State of Maharashtra and others reported in **2012(5) Mh.L.J. 36.**

8. Learned AGP submitted that petitioners in both the writ

petitions obtained benefits accruing from caste 'Gadi Lohar' and, after completion of their education, with an oblique motive, they made this application. She submitted that these applications do not fall within the expression 'obvious mistake'. She submitted that caste of both petitioners in school record of respondent No. 3 was mentioned as 'Gadi Lohar' with full knowledge by their parents. After getting benefits of 'Gadi Lohar' caste now they are seeking correction with some oblique motive. Therefore, this cannot be called as 'obvious mistake'. She, therefore, prayed for dismissal of both the writ petitions.

9. While rejecting the applications of the petitioners, respondent No. 3 relied on paragraph 26.4 of Secondary School Code (SSC) which 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 sub-rule (3) above 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 applications shall be entertained. The procedure to be followed in such cases is laid down in Appendix Six.”

9.1. This paragraph connotes that application for change or correction in date of birth, name, surname, caste etc. shall be entertained from or on behalf of a pupil who is attending the school as the change amounts to change in the entries in the General Register and also change in the School Leaving Certificate. This paragraph also connotes that correction can be carried out in bonafide cases where wrong spelling of word or an obvious mistake mentioned in sub-rule(3) is noticed any time after issuance of 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. Thus, this paragraph itself makes it clear that even after issuance of School Leaving Certificate, correction can be made in bonafide cases involving wrong spelling of a word or an obvious

mistake so as to be consistent with the school record.

10. This question had fallen for consideration before a Division Bench of this Court in the case of Shaikh Shafi (supra) in which, it was held that instructions in paragraph No. 26.4 are directory in nature and not mandatory. It is observed in paragraph No. 11 of the judgment as under :-

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 bona fide 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.

10.1 From these observations, it is apparent that instructions contained in paragraph 26.4 of the Secondary School Code are directory and not mandatory in nature. In this view of the matter, it

was not proper on the part of respondent No. 3 to have rejected the applications on technical ground that petitioners are alumni.

11. Reliance is placed on the case of Janabai d/o Himmatrao Thakur (supra) in which following questions were referred to the Full Bench :-

“(A) Whether an application seeking alteration, change or correction in the name, surname, date of birth, caste, or other entries entered in the General Register, including correction in spelling of name, surname, date of birth, caste as recorded in the General Register, shall be entertained by or on behalf of the pupil who has left the school and the change in the aforesaid entries, is necessitated for the purposes like securing an admission to another educational institution and the School Leaving Certificate is relied upon as an evidence for name, surname, caste, date of birth etc.

(B) Whether the view adopted by the Division Bench in the matters of (i) Swapneel s/o Maroti Sonwale vs. State of Maharashtra and others, reported in 2013(6) Mh.L.J. 400; (ii) in the matter of Vilas s/o Dattatraya Ransubhe vs. State of Maharashtra and others, reported in 2013(1) Mh.L.J. 851; and (iii) Arshad Khalid Jamal vs. State of Maharashtra and others, reported in 2012(4) Mh.L.J. 646, deserves to be upheld or whether the view adopted by the Division Bench at Nagpur in Special Civil Application No. 1048 of 1971, decided on 5th April, 1973 (Captain Anil Vasantrya Bhat and another vs. Divisional Secretary, Maharashtra State Board of Secondary Education, Nagpur Divisional Board, Nagpur and

another) is a correct view.

(C) Whether the change sought to be requested by the petitioner, is required to be consistent with Clauses 26.3 and 26.4 read with Appendix Six of the Secondary Schools Code, meaning thereby, bona fide cases where wrong spelling of a word or an obvious mistake of the type mentioned in Clause 26.3 can only be directed to be corrected.”

11.1 The Full Bench, after considering the judgments of the Honourable Supreme Court and this Court held as under :-

26. The above view is supported by the language as employed in Appendix 6 and the forms thereunder, vide Clause 26.4 of the S.S. Code, which clearly contemplate that any change sought to be made, has to be supported by documentary evidence whose probative value has to be tested on the principles as laid down in the Evidence Act. Thus, a change, even though it falls within the scope of the expression “obvious mistake” will have to be tested on the basis of the material available as well as the probative value of such material.

27. One cannot be oblivious to the fact that even as on date, the level of literacy in the village is abysmal. The situation of literacy, even in the cities in so far as persons below the poverty level is concerned, is also not that good. In such situations when a child gets admission in a school, for the first time, the chance of errors occurring in the entries in the General Register of the School, due to improper understanding of the parents, of the importance of the entries in the General Register in the School cannot be ruled out.

28. The language of Clauses 26.3 and 26.4, therefore has left a little play in its meaning, for

correction of such errors, and that play is reflected from the use of the words “obvious mistakes”, which is then illustrated by an example of use of a particular date of a month which is not in the calendar at all. This clearly indicates that the intention is to maintain the entries in the General Register of a School, sacrosanct, inviolate and fixed, subject to the leeway permitted. Such a fixation is also necessary to maintain the sanctity of the entries in the School Register, as they accompany a person throughout his/her lifetime. On a plain reading of the language of Clause 26.3 and 26.4, we find that the limitation to this effect is contained in Clause 26.3 as well as in Clause 26.4 however, the scope of correction, due to occurrence of any mistake, has been duly built-in into the provision.

11.2 The Full Bench answered the questions in paragraph No.

39 of the judgment in following terms :-

39. This being the position, we answer Question Nos. (A) and (C) in the following terms :

(a) An application for alteration in the entries in the General Register is permissible, with the previous permission of the appropriate authority at any time when the pupil is attending the school.

(b) No application for alteration in the figure of date of birth is permissible, after the student has left secondary school, except correction in the nature of ‘obvious mistakes’ as indicated in Clause 26.3 i.e. of a nature where the date of a particular month which does not exist in the calendar and likewise.

(c) Thus, in light of the above, an application for change in the name, surname or caste, either due

to reasons/cause unnoticed before or even occurring subsequently, being errors which fall within the category of 'obvious mistakes', can be made, even after the student has left school in light of the language of Clause 26.3 in the manner as indicated by Appendix Six in the forms as prescribed in the S.S. Code.

(d) For the purposes like admission to another educational institution, in cases of obvious mistakes as prescribed in Clause 26.4, a change/correction in the school leaving certificate, so as to make the entry consistent with the corresponding entries in the General Register of the School is permissible, which in fact is in consonance with (c) above.

12. This clearly shows that respondent No. 3 is empowered to carry out corrections if the corrections are required to be done in bonafide cases or in cases of "obvious mistakes". Therefore, respondent No. 3 clearly erred in rejecting the application on technical ground that both the petitioners had left the school.

13. In the case of Shaikh Shafi (supra), the matter was remitted to respondent No. 3 for fresh consideration on its own merits. We also deem it appropriate to follow the same course and remit the matter to respondent No. 3 for consideration on its own merits.

14. For the foregoing reasons, the impugned orders are set aside and the matter is remanded to respondent No. 3 for consideration of the applications of both the petitioners on their own merits. That shall be done within a period of three months from the date of receipt of a copy of this order. It is made clear that we have not expressed any opinion on merits of the matter. We also clarify that we have not examined the caste claim of petitioners and we have refrained ourselves from making any observation as to the real caste of petitioners.

15. With these observations, both writ petitions are allowed to the above extent. Rule made absolute to the extent indicated above.

(M. G. SEWLIKAR)
Judge

(UJJAL BHUYAN)
Judge

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