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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2632 OF 2021

Phulrenu Harilal Chauhan
aged 54 years, residing at 17/5,
Makarand Society, Veer Savarkar
Marg, Mahim, Mumbai 400 016 ... Petitioner.

V/s.

1. State of Maharashtra,
through its Secretary, Social
Justice Department,
Mantralaya, Mumbai 400 032.
2. District Caste Certificate Scrutiny
Committee, Mumbai City,
through its Member Secretary,
having its office at Panchsheel,
Matunga Labour Camp, Mahim,
Mumbai – 400 016.
3. Deputy Collector, Mumbai City,
Old Custom House, Shaheed
Bhagatsing Marg, Fort,
Mumbai – 400 023 ... Respondents.

Mr. R.K. Mendadkar, with Mr. T.V. Jadhav, for the Petitioner.
Smt. A.A. Purav, AGP, for the Respondents-State.

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**CORAM : SUNIL B. SHUKRE, AND
AMIT BORKAR, JJ.**

DATE : 21st FEBRUARY 2022.

JUDGMENT: (Per Sunil B. Shukre, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent.
2. Controversy in this petition arises on account of refusal of Respondent No. 2 to issue Caste Certificate, “Mochi” Scheduled Caste to the children of the Petitioner on the ground that forefathers of the Petitioner were not residents of the State of Maharashtra on the cut-off date, 10th August 1950.
3. On going through the impugned order passed by Respondent No. 2 which maintains the order dated 18th January 2018 passed by Respondent No. 3, we, however, find that both the Respondents have failed to appreciate the document at page 111 of the petition, which is a Leaving Certificate issued in the name of Harilal Maganlal Chohan, father of the Petitioner, in its proper perspective. This certificate shows the date of admission of the father of the Petitioner to be 5th April 1943 and date of leaving school to be 31st May 1947. It further shows that it has been issued by Alfred High School, Bhavnagar.
4. In other words, this is a document which shows place of ordinary residence of the father of the Petitioner and which has been issued prior to the cut-off date, 10th August 1950 as stipulated in Section 2(e) of the Maharashtra Scheduled Castes, Scheduled Tribes,

Do-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 ('Rules, 2012' for short). This Rule lays down that deemed date means 10th August 1950, that is the date of Presidential Order for Scheduled Caste, 21st December 1961 for De-Notified Tribes and Nomadic Tribes and 13th October 1967 for Other Backward Classes and Other Special Backward Classes. We are here concerned with the deemed date of 10th August 1950 as the Petitioner is claiming herself to be belonging to Mochi 'Scheduled Caste'. Rule 3 of the Rules, 2012 lays down that the Competent Authority may issue a caste certificate to the applicant who is a permanent resident of the concerned area on deemed date for which the Competent Authority is designated or appointed by the Government, by notification published under clause (b) of Section 2 of the Act in the Official Gazette. This will show that the Competent Authority may issue a caste certificate to an applicant who is a permanent resident of the area within the jurisdiction of the Competent Authority on the deemed date for which area the Competent Authority is designated or appointed. No doubt, the Competent Authority in the present case has been designated for the State of Maharashtra but, when we consider the deemed date of 10th August 1950 for the purposes of the present petition, the Competent Authority for the State of Maharashtra having jurisdiction over limited area within the District would also be the Competent Authority for that area on 10th August 1950. So, the next question that would arise here would be as to

whether or not on 10th August 1950, the area of residence of the applicant or his forefathers was the area within the jurisdiction of the Competent Authority.

5. In the present case, a relevant document which is relied upon by the Petitioner is the School Leaving Certificate creating a record of residence for the period from 1943 to 1947 in respect of the father of the Petitioner. This record of residence pertains to Bhavnagar. Bhavnagar, as per the provisions made in the Bombay Reorganisation Act, 1960, and in particular Sections 3 and 4 thereof would show that Bhavnagar was previously part of Bombay Presidency and it was certainly part of Bombay Presidency on 10th August 1950 and that Bhavnagar was got separated and became part of newly reorganised State of Gujarat with effect from the appointed day, i.e. 1st May 1960. So, from 10th August 1950 till 30th April 1960 Bhavnagar was part of Bombay Presidency and, therefore, the document in question would have to be considered as proof of residence of the father of the Petitioner within Bombay Presidency, which was within the jurisdiction of the Competent Authority, i.e. Respondent No. 3 and, therefore, Respondent No. 3 could not have rejected this document on a superficial ground that this document served as proof of residence of the father of the Petitioner in Gujarat State.

6. We are, therefore, of the opinion that the Respondent No. 3 has committed serious error of law in recording a finding that the document in question (page 111 of the petition) was a proof of

residence of Gujarat State and not the Bombay Presidency within the jurisdiction of Respondent No. 3. The same mistake has been continued by Respondent No. 2 when it confirmed the order dated 18th January 2018 passed by Respondent No. 3. Both these orders, therefore, deserve to be interfered with.

7. We are fortified in our view by the law laid down by the Apex Court in *Sudhakar Vithal Kumbhare v. State of Maharashtra & Others*¹ especially when it is the case of the Petitioner that Mochi is a caste which is notified to be the Scheduled Caste not only in the State of Maharashtra but also in the State of Gujarat and, therefore, after the bifurcation of the areas and their reorganisation in two different States, the community which enjoyed the benefit in the erstwhile area would also continue to enjoy the said benefit in the State of which now it forms part. This law has also been followed in the case of *Ashwin Babubhai Patel v. State of Maharashtra & Others*.²

8. Accordingly, the petition is allowed. The impugned order dated 4th December 2019 passed by Respondent No. 2 is hereby quashed and set aside and thus the order passed by Respondent No. 3 on 18th January 2018 is also quashed and set aside.

9. Respondent No. 3 is directed to issue Caste Certificate to the children of the Petitioner as they belonging to Mochi 'Scheduled Caste' within four weeks from the date of receipt of this order, which

¹ (2004) 9 SCC 481.

² Civil Writ Petition No. 3832 of 2014, decided on 17th January 2019.

shall be subject to validation of their caste status by the Scrutiny Committee in accordance with law.

10. The Writ Petition is disposed of accordingly. No costs.

(AMIT BORKAR, J.)

(SUNIL B. SHUKRE, J.)