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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 3254 OF 2021

Kasturi Sushma Khandekar

... Petitioner

V/s.

State of Maharashtra and Ors.

... Respondents

Mr. Makrand Kale a/w. Mr. S.R. Ghanavat for the Petitioner

Mr. N.C. Walimbe, AGP for the Respondent - State

***CORAM : SUNIL B. SHUKRE &
G.A. SANAP, JJ.***

DATE : 22 MARCH 2022

Oral Judgment (Per Sunil Shukre, J.) :-

Heard the learned Counsel for the parties.

2. Rule. Rule made returnable forthwith. Taken up for final disposal by consent of parties.

3. The main issue involved in this Petition is about which of the two social status, one that of the father and the other that of the mother could be claimed by the Petitioner. The answer to the question would depend upon the evidence regarding the manner in which and by whom the Petitioner has been reared.

4. In the present case, on going through the vigilance report and also the document relating to school entry, one can at once say that the Petitioner has been almost entirely brought up by her mother who belongs to Mahar Scheduled Caste. The mother and the father of the Petitioner were married on 25 April 1993 but soon after the marriage, discord struck the couple as a result of which, the couple could never reconcile their differences. The inevitable occurred in November 2009 when there was a consent decree of divorce granted by the Competent Civil Court. The Petitioner having been born in August 2002 was hardly seven years of age at that time and was thereafter, raised by her mother as a single parent. Even before the divorce, the record shows that the Petitioner was looked after and taken care of in all respect by her mother. The Vigilance Enquiry Officer, on making a detailed enquiry, found that father of the Petitioner never cared for his two children and never related to them in any manner nor did he take his children to any of his paternal relative. The Vigilance Officer has found that the children or the two siblings including the Petitioner do not recognize any of the paternal relatives. He has also noted that while admitting the Petitioner to the first standard of a school, her mother showed the Petitioner as belonging to Mahar caste. He has further found that the grandfather of the children follows customs, traditions and practices prevailing in Mahar caste.

5. Thus, the evidence shows that for all purposes the Petitioner has grown and has been reared in an atmosphere and with customs, traditions and practices that prevail in a household inhabited by Mahar caste persons, which is the caste of the mother of the Petitioner from maternal side. This evidence would certainly entitle the Petitioner to stake a claim as belonging to Mahar caste, as per the law laid down by the Apex Court in the case of ***Rameshbhai Dabhai Naika v/s. State of Gujarat and Ors. (2012) 3 SCC 400***, which is followed by this Court in many of its judgments including the one in the case of ***Anchal d/o. Bharati Badwaik v/s. District Caste Scrutiny Committee and Ors. (WP No.4905 of 2018, decided on 8 April 2019)***. However, while invalidating the caste certificate of the Petitioner, the Scrutiny Committee erroneously held that the Petitioner ought to have submitted evidence from the side of her father in order to prove her claim. In the face of evidence overwhelmingly favouring the case of the Petitioner showing that she is entitled to claim the social status of her mother, the Scrutiny Committee took quite a contrary view ignoring the law declared by the Supreme Court in the case of ***Rameshbhai Naika*** (supra).

6. Further perusal of the impugned order also shows that the Scrutiny Committee has failed to properly appreciate the evidence brought on record by the Petitioner, which was in the nature of entries of relatives of the Petitioner from maternal side. In fact, we have already held that the Petitioner is entitled to claim the

same social status as her mother, she having been almost entirely brought up by her mother. Such peculiar background of the Petitioner discussed earlier would show that the Petitioner was also subject to same disadvantages, same neglect and same backwardness as her mother faced and therefore, the Petitioner can rightfully take the caste of her mother and not her father. In these circumstances, the Scrutiny Committee ought to have appreciated the evidence produced on record by the Petitioner which pertains to the relatives of the mother of the Petitioner but that has not been done by the Scrutiny Committee.

7. Now, let us consider one aspect of the case which at the moment may appear to be against the Petitioner, which in fact, does not, at least at this stage. In the report submitted by the Vigilance Enquiry Officer, there is a mention about drawing of one line across the word "Harijan" in the school entry of the maternal grandfather of the Petitioner. The scoring out the word "Harijan", prima facie, would not create any adverse impact on the social status claimed by the Petitioner for the reason that the word "Mahar" mentioned in this entry has not been scored out. Nevertheless, we leave it to the wisdom of the Scrutiny Committee to consider this aspect as well in accordance with law, without being influenced in any manner by these observations.

8. In the result, we find that the impugned order cannot be sustained in the eye of law. The Petition is allowed. The impugned order is hereby quashed and set aside and the matter is remanded back to the Respondent No.2 – Scrutiny Committee for deciding the caste claim of the Petitioner afresh and in accordance with law at the earliest and in any case, within three months of the appearance of the Petitioner before the Respondent No.2. The Petitioner shall appear before the Respondent No.2 on 4 April 2022. The Respondent No.2 is at liberty to consider the existing evidence and also to admit on record additional evidence whether through additional vigilance enquiry or through the documents placed on record by the Petitioner. The Petitioner is at liberty to file on record additional documents.

9. Rule is made absolute in the above terms. No costs.

G.A. SANAP, J.

SUNIL B. SHUKRE, J.

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by JYOTI
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