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wp 4791.24

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

WRIT PETITION NO. 4791 OF 2024

Avinash S/o Baburao Dahiwad,
Age: 49 years, Occu: Service,
R/o Vundawan Nagar,
Near water tank, Shahada,
Tal: Shahada, Dist. Nandurbar.

... **PETITIONER**

V/s.

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Government of Maharashtra,
Mantralaya, Mumbai – 32.
2. The Education Officer (Primary)
Zilla Parishad, Dhule.
3. The Headmaster,
Nagar Parishad Prathamik Shala No.06,
Shirpur, Tal. Shirpur, Dist. Dhule.

... **RESPONDENTS**

.....
Mr. N.N. Bhagwat, Advocate for the Petitioner
Mr. N.S. Tekale, AGP for the Respondent-State
Mr. N.N. Desale, Advocate for the Respondent No.2
Mr. D.S. Bagul, Advocate for the Respondent No.3
.....

**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**

RESERVED ON : 12th September, 2024

PRONOUNCED ON : 24th September, 2024

JUDGMENT (Per: Y.G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.
2. By the present Petition under Article 226 of the Constitution of India, the Petitioner has prayed for issuance of Writ of Mandamus directing the Respondent No.3 to accept his application dated 5th January, 2024 and to forward proposal to the Respondent No. 2 for correction of his caste “Sonar” instead of “Lad-Sonar” in school record of his father. The Petitioner further prayed for issuance of directions against the Respondent No. 2 to grant sanction for correction in caste column of school leaving certificate of his father issued by the Respondent No.3-School run by the Respondent No. 2.
3. The learned counsel appearing for the Petitioner canvassed that the deceased father of the Petitioner belongs to “SONAR” caste which falls under Other Backward Category (OBC), however, caste of the Petitioner’s father was wrongly recorded as “Lad-Sonar” in column of caste of school leaving certificate issued by the Respondent No.3 - School being run by the Respondent No.2. The Competant Authority issued “SONAR” (154) caste certificate in the name of the Petitioner’s son as well as in the name of the Petitioner and “Lad-Sonar” caste is not in existence in the State of Maharashtra.

4. It is further canvassed that the Municipal Corporation, Ulhasnagar issued death certificate in respect of the Petitioner's father describing caste "Sonar". So also, "Sonar" caste is mentioned in caste column of school leaving certificate issued by the Z.P. School, Dhadgaon Tq. Akrani Dist. Nandurbar in respect of the Petitioner. On 28th June, 2004, the Sub-Divisional Officer Taloda issued "Sonar" caste certificate in favour of the Petitioner and on 31.03.2023, the Sub-Divisional Officer, Taloda, issued "Sonar" caste certificate in favour of Petitioner's son namely Aditya. However, due to recording of wrong caste in school leaving certificate of the Petitioner's father, the Petitioner and his son are facing difficulties. Therefore, on 05.01.2024, 06.02-.024, the Petitioner submitted an application with the Respondent No. 3 for correction of caste entry in caste column of school leaving certificate, however, the Respondent No. 3 has not taken any steps.

5. Mr. Bhausaheb Bhikan Chavan, the Dy. Director of Education, Nashik Region filed affidavit in reply and strongly opposed the claim of the Petitioner. Mr. Tekale, the learned AGP submits that since the Petitioner prayed for correction of caste in the school leaving certificate, therefore, it is necessary to implead the Department of Social and Special Assistance Department as party Respondent and the Petition is liable to be rejected on the following grounds:

- i. It is not case of the Petitioner about violation of fundamental or legal right;
- ii. The Petition involves disputed question of facts;
- iii. The Petition suffers from delay and laches;
- iv. The corrections sought by the Petitioner does not fall within the provisions of Clause 26 of the Secondary School Code.
- v. The Petition suffers from non joinder of necessary parties because the petitioner prayed for correction in cast column of school leaving certificate of his father.
- vi. The Caste Scrutiny Committee is the Competent Authority to decide the caste claim of the Petitioner, if submitted for scrutiny.

6. The learned AGP further submits that under the State list “Sonar” caste is shown at Sr. No. 154 and recognized as Other Backward Category, however, correction in the school record pertaining to caste is not permissible. The caste of the Petitioner’s father is recorded as “Lad-Sonar” in school record in the year 1953 but since then no steps have been taken to correct the caste in school record and after lapse of more than 50 years, the Petitioner submitted representation for correction in the school record of his father, hence, prayed for dismissal of the petition.

7. Ms. Sunita Bachhav Sonawane, the In-charge Headmaster in Respondent No.3 - School filed an affidavit in reply and countered the claim of the Petitioner. The learned counsel appearing for the Respondent Nos. 2 & 3

canvassed that the Petitioner's father Baburao/Babulal was admitted in the Respondent No.3 - School on 9th April, 1943 and at the time of admission, caste of the Petitioner's father was recorded as "Lad-Sonar". However, the Petitioner failed to produce substantial documents to show that the Petitioner's father belongs to "Hindu- Sonar". The Petitioner's father expired on 17th September, 2000 and after lapse of more than 23 years, the Petitioner applied for change of caste "Hindu-Sonar" instead of "Lad-Sonar" in caste column of school leaving certificate of the Petitioner's father.

8. In **V. V. Giri V/s. Dippala Suri Dora & Ors.**; AIR 1959 SC 1318, the Hon'ble Supreme Court held that the Caste-status of a person in the context would necessarily have to be determined in the light of the recognition received by him from the members of the caste into which he seeks an entry.

9. In **Rameshbhai Dabhai Naika V/s. State Of Gujarat & Ors.**, (2012) 3 SCC 400, the Hon'ble Supreme Court has observed thus:

"27. The caste system in India is ingrained in the Indian mind. A person, in the absence of any statutory law, would inherit his caste from his father and not his mother even in a case of inter-caste marriage."

(emphasis added) and in paragraphs 41 and 42 of the judgment as under:-

"41. Determination of caste of a person is governed by the customary laws. A person under the customary Hindu law would be inheriting his caste from his father. In this case, it is not denied or disputed that the respondent's father belonged to a "Kurmi" caste. He was, therefore, not a member of the Scheduled Caste. The caste of the father, therefore, will be the determinative factor in absence of any law."

Here there is no reference to Valsamma but the connection is obvious. It is only the next logical step to what was said in paragraph 31 of Valsamma. If as a result of inter-caste marriage the woman gets transplanted into the family of the husband and takes her husband's caste it would logically follow that the child born from the marriage can take his/her caste only from the father. We shall presently consider the highly illogical consequences of this logical derivation but before that it needs to be noticed that Sinha, J. rejected the government circular also that provided that the caste of the mother might be taken as the caste of the child. In the same paragraph (41) Sinha, J. observed:

“Reliance, however, has been placed upon a circular dated 3- 3- 1978 said to have been issued by the State of Bihar which is in the following terms:

“Subject: Determination of the caste of a child born from a non-Scheduled Caste Hindu father and a Scheduled Caste mother.

Sir, In the aforesaid subject as per instruction I have to state for the determination of a child born from a non- Scheduled Caste father and a Scheduled Caste mother, upon deliberation it has been decided that the child born from such parents will be counted in the category of Scheduled Caste.

2. In such cases before the issue of caste certificate there will be a legible enquiry by the Block Development Officer, Circle Officer/Block Welfare Officer."

42. The said circular letter has not been issued by the State in exercise of its power under Article 162 of the Constitution of India. It is not stated therein that the decision has been taken by the Cabinet or any authority authorized in this behalf in terms of Article 166(3) of the Constitution of India. It is trite that a circular letter being an administrative instruction is not a law within the meaning of Article 13 of the Constitution of India. (See Dwarka Nath Tewari v. State of Bihar AIR 1959 SC 249)."

(emphasis added)

10. The similar issue arose before the Gujarat High Court in case of **Nainish Kirankumar Maheria V/s. Principal Image English School** decided on

20th February, 2019, wherein the caste of the Petitioners were mentioned as "Hindu Rohit", however, "Hindu Maheria" was mentioned in the school leaving certificates in favour of the Petitioners. Since, the names of the Petitioners were mentioned as "Maheria Nainish Kirankumar" and "Maheria Nishita Kirankumar" respectively and "Maheria" is the surname of the Petitioners. However, while issuing school leaving certificates, the Respondent No.1 mentioned the caste of the Petitioners as "Hindu Maheria", however as stated herein-above, the caste of the Petitioners is "Hindu Rohit". Therefore, it has been opined that the alternative remedy is no bar in entertaining said Petition in the peculiar facts of the said case.

11. However, in the case in hand the issue arisen is that whether the son can claim for correction in caste column of school leaving certificate of his deceased father after 71 years from the date of issuance of school leaving certificate and after lapse of more than 23 years after demise of his father. By the present Petition, the Petitioner specifically prayed for issuance of Writ of Mandamus directing the Respondent Nos.2 & 3 for effecting change of caste "Hindu-Sonar" instead of "Lad-Sonar" in caste column of school leaving certificate of his father issued by the Respondent No.3 - School. The Petitioner produced school leaving certificate of his father Shri Babulal (Baburao) s/o Raghunath issued by the Respondent No. 3.

12. Needless to say that on 9th April, 1943, the Petitioner's father was admitted in the Respondent No.3 - School vide School Register entry no. 40 (Book No. 3) and his caste was shown as "Lad-Sonar" in the school leaving certificate. The extract of General School Register maintained by the Respondent No.3 is produced on record, which specifically reflects caste of the Petitioner's father as "Lad-Sonar". The Petitioner's father left the Respondent No.3 - School on 1st May, 1953, when he was in 7th Standard and after lapse of 71 years from leaving the school and after more than 23 years after the death of the Petitioner's father, the Petitioner for the first time applied for correction / change in caste of his father.

13. It is pertinent to note that by birth, the son carries caste of his father. Though, the Petitioner produced Caste Certificates issued by the Sub-Divisional Officer / Executive officer in his favour as well as in favour of his son namely Aditya showing "Hindu-Sonar" but it does not substantiate that the father of Petitioner or his grand-father was belonging to "Hindu-Sonar". Nevertheless, the Petitioner has produced a certificate dated 24th July, 2024 issued by Shri Lad Suvarnakar Samaj Mandal, Nandurbar, which shows that the "Lad-Sonar", "Ahir-Sonar", "Vaisha-Sonar", "Gujrati-Sonar" "Marwadi-Sonar", "Kshtriya-Sonar" are sub-castes of "Sonar". Therefore, it substantiates about

existence of “Lad-Sonar” caste, which certainly falls within the ambit of open category. Since under the State list “Sonar” caste is shown at Sr. No. 154 and recognized as Other Backward Category, therefore, the Petitioner wanted to change caste of his deceased father in school leaving certificate in order to take benefits as well as for validation of caste claim of his son, which may be submitted before the Caste Scrutiny Committee.

14. It is trite proposition of law that a person can change his religion and faith but not the caste to which he belongs, as caste has linkage to birth. Therefore, it is not permissible to change the caste in school record and no provisions of law provides for change in caste of any citizen, which is adopted by birth through the father.

15. In view of above discussion, we do not find it appropriate to issue such Writ of Mandamus as against the Respondent Nos. 2 & 3 for correction of entry of caste in school leaving certificate as prayed by the Petitioner, hence, this Petition deserves to be dismissed. **Therefore, the present Petition is hereby dismissed.** Accordingly, **the Rule is discharged.**

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]