



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

17 WRIT PETITION NO.7517 OF 2013

Dagadu Anaton Jadhav,
Age: 52 years, Occ. Labour,
R/o. At Post Aradgaon, (Jadhavwasti),
Tq. Rahuri, Dist. Ahmednagar.

....PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
Social Welfare Department
Mantralaya, Mumbai.
2. The Scheduled Caste
Certificate Scrutiny Committee
Nashik Division Nashik
District: Nashik.
3. The Principal
Mahatma Phule Agricultural University
Tq. Rahuri Dist. Ahmednagar.
4. The Registrar
Mahatma Phule Agricultural University
Tq. Rahuri Dist. Ahmednagar.

....RESPONDENTS

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Mr. Anandsing S. Bayas, Advocate for the Petitioner
Mr. S. V. Hange, AGP for Respondents No.1 & 2
Mr. Manish N. Navandar, Advocate for Respondents No.3 & 4

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**CORAM : MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

DATE : 11.03.2025

JUDGMENT :- (Y. G. KHOBRADE, J.)

1. Rule. Rule made returnable forthwith. With consent of both the sides, heard finally at the stage of admission.

2. By the present petition under Article 226 of the Constitution of India, the petitioner is challenging the order passed by respondent no.2, the Scrutiny Committee, constituted under the Maharashtra Act No. XXIII of 2001, in a proceeding under Section 7, refuting his claim as belonging to '*Hindu Mahar*' scheduled caste.

3. Mr. Bayas, learned counsel for the petitioner submits that the petitioner born in and belongs to scheduled caste *Mahar* community at village Aradgaon, (Jadhavwasti), Tq. Rahuri, Dist. Ahmednagar. The forefathers of the petitioner were illiterate. The petitioner is just second class passed out and he does not know how to read and write. His father and grandfather were also doing labour work. The petitioner served with respondent Nos. 3 & 4, Mahatma Phule Agricultural University, for more than 15 years being a daily wager and his service has been considered for regularization for the post of Peon, after considering length of service. Since, the petitioner belongs to scheduled caste '*Mahar*' community, his name appeared in the list of the candidates for grant of appointment on regular basis. Accordingly, on 02.06.2004, respondent no.4 issued appointment order in favour of the petitioner

and his proposal for caste verification was forwarded to respondent no.2, the scrutiny committee, in the year 2012.

4. The petitioner was called out to submit necessary documents in support of his caste claim before the respondent no.2 - scrutiny committee. In support of the claim, he submitted school record of his uncle pertaining to pre-independence i.e., for the year 1940, his grandfather's death certificate pertaining to year 1933, which show entries of '*Mahar*' caste. The entry recorded in 7/12 extract in respect of his grandfather was as Appabhau Mahar. The certificate was issued by the Gram Vikas Adhikari Gram Panchayat, Aradgaon certifying that the petitioner was resident of said village and he belongs to Hindu '*Mahar*' caste. However, the vigilance cell of respondent no. 2 conducted inquiry and submitted report stating that, the petitioner and his family were converted to the christian religion. Therefore, relying on the vigilance cell report, respondent no.2 passed the impugned order on 08.07.2013 holding that as per documents produced by the petitioner and vigilance cell report, the petitioner failed to prove that he belonged to '*Mahar*' scheduled caste and refuted caste claim of the petitioner.

5. The learned counsel for the petitioner canvassed that though the vigilance cell collected material and certificates issued by the

Parish Priest, Sneha Sadan on 28.02.2013 and certificate dated 08.02.2013 issued by St. Joseph's Church Kendal, tq. Rahuri does not show that the petitioner or his father and grandfather converted to christianity. Besides, there was old school record and death certificate of pre-independence pertaining to years 1940 and 1933 in respect of the petitioner's grandfather which demonstrate that the petitioner's ancestral belonged to 'Mahar' SC community. However, respondent no.2, caste scrutiny committee, illegally refuted claim of the petitioner, hence, prayed to quash and set aside the impugned order.

6. In support of these submissions, the learned counsel for the petitioner placed reliance on following cases;

- (i) Judgment dated 18.07.2023 passed by this Court in Writ Petition No.824 of 2015, Suvarna D/o Vijay Kharat Vs. The State of Maharashtra and Others;*
- (ii) Judgment dated 17.12.2023 in writ petition. No.652 of 2013, Dipak S/o Yohan Shinde Vs. The State of Maharashtra and Others;*
- (iii) Kiranlata D/o Wamanrao Sontakke Vs. Divisional Caste Certificate Scrutiny Committee, 2019 (4) Mh.L.J. 447;*
- (iv) Bhanudas Hona Gajbhiya Vs. The State of Maharashtra and others, 2017(5) Bom.C.R.252.*

7. Per contra, the learned AGP supported the inference drawn by respondent no.2, scrutiny committee. It is canvassed that the validity of the evidence gathered during the vigilance cell enquiry was decisive

and it has been found that the petitioner failed to give customs and rites of Hindu religion. Further, the petitioner failed to narrate the prayer followed in Buddhism. During inquiry, it is found that the father of petitioner was married as per christian customs and rites and the petitioner's family members are following christianity, hence, the petitioner's caste claim has been rightly refuted. Therefore, the impugned order is just and proper, hence, prayed for dismissal of the petition.

8. At the outset, it is submitted that the petitioner heavily placed reliance on school leaving certificate of his uncle Shri. Shamu Kisan Jadhav issued by headmaster Zilla Parishad Ahmednagar on 10.08.1940 wherein, entry in religion column described as '*Hindu Mahar*'. The death certificate issued in the year 1933 in respect of the petitioner's grandfather Shri Dagadu Bhau reflect entry in caste column as '*Mahar*'. The entries recorded in revenue record 7/12 extract for the year 1962 to 1965 in favour of petitioner's grandfather appear as '*Appabhau Mahar*'. There are no allegations that the petitioner has manipulated school record, death certificate and revenue record. The pre-independence record proves that the petitioner's forefathers belong to *Mahar* caste which is recognized as scheduled caste under the scheduled castes/scheduled tribes order, 1950.

9. The vigilance cell submitted its report stating that the last ritual of the petitioner's grandfather was performed as per rituals of christianity. The portrait of Lord Yesu Christ was found in the house of petitioner and some tiles of Lord Yesu pictures were affixed on the wall of petitioner's house, hence, the petitioner is following Christianity and failed to prove his caste claim.

10. The impugned order passed by respondent No. 2 scrutiny committee does not reveal that the vigilance cell collected any certificate from any church or any priest to show that the petitioner or his forefathers ever converted to Christianity. On the other hand, the pre-independence documents show that the petitioner's forefathers were Hindu Mahar.

11. In case of *Mrs. Valsamma Paul Vs. Cochin University (1996) 3 SCC 545*, the Hon'ble Supreme Court held that, merely changing religion does not automatically entitle a person to reservation benefits unless the social disadvantages and backwardness persist in the new religious community.

12. In case of *Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others; AIR 1954 S.C. 236*, paragraph nos. 48 and 49 read as under;

"(48) Conversion brings many complexities in its train, for it imports a complex composite composed of many ingredients. Religious, beliefs, spiritual experience and emotion and intellectual conviction mingle with more material considerations such as severance of family and social ties and the casting off or retention of old customs and observances.

The exact proportions of the mixture vary from person to person. At one extreme there is bigoted fanaticism bitterly hostile towards the old order and at the other an easy going laxness and tolerance which makes the conversion only nominal. There is no clear-cut dividing line and it is not a matter which can be viewed from only one angle.

(49) Looked at from the secular point of view, there are three factors which have to be considered: (1) the reactions of the old body, (2) the intentions of the individual himself and (3) the rules of the new order. If the old order is tolerant of the new faith and sees no reason to outcaste or excommunicate the convert and the individual himself desires and intends to retain his old social and political ties, the conversion is only nominal for all practical purposes and when we have to consider the legal and political rights of the old body the views of the new faith hardly matter.

The new body is free to ostracise and outcaste the convert from its fold if he does not adhere to its tenets, but it can hardly claim the right to interfere in matters which concern the political rights of the old body when neither the old body nor the convert is seeking either legal or political favours from the new as opposed to purely spiritual advantage.

On the other hand, if the convert has shown by his conduct and dealings that his break from the old order is so complete and final that he no longer regards himself as a member of the old body and there is no reconversion and readmittance to the old fold, it would be wrong to hold that he can nevertheless claim temporal privileges and political advantages which are special to the old order."

13. In case of ***G. Michael Vs. S. Venkateswaran, [(1952 SCR 1053)]***, wherein it is held that the religion can be changed but caste remains unchanged by conversion or change of religion. The Caste is a

social status acquired by birth and is not automatically altered by a change in religion.

14. In writ petition no.824 of 2015, judgment dated 18.07.2023 ***Suvarna Vs. State of Mah. cited (supra)*** this Court relied on the case of ***Santosh Shirsat Vs. Maharashtra State and Others*** decided on 10.09.2013 in writ petition no.5105 of 2013 and in case of ***Bhanudas Hona Gajbhiya Vs. State of Maharashtra and Others; 2017(5) Bom. C.R.,252***, wherein similar question was considered about conversion of Hindu Mahar to Christianity and observed as under:

“31. The petitioner belongs to Mahar Scheduled Caste. As far as freedom of religion is concerned, that is not to be confused and equated with the caste and tribe. The caste or tribe cannot be changed and there is no way one can enter into another caste or tribe and exit from one caste or tribe into another. Thus, religion can be changed but not the caste.

38. We do not see, therefore, justification for the conclusion in the instant case that because the petitioner is allegedly a Christian he is not a Scheduled Caste, namely, Hindu Mahar. Such a conclusion could have been recorded only after the Committee had concrete proof before it that as the petitioner claimed to be Hindu Mahar, his religion has a definite bearing. That is therefore relevant for the enquiry. There is therefore, justification to hold that if the petitioner was not a Hindu, then, he cannot be a Hindu Mahar. For a moment, we accept that such findings or conclusion could be reached but when Article 366 was referred containing definitions, even there, the Constitution clarifies that unless the context otherwise requires, the expressions therein have the meaning assigned to them, and Clauses 24 and 25 of Article 366 contains the same definitions, of Scheduled Castes and Scheduled Tribes and referable to Articles 341 and 342. If the petitioner claims to be belonging to Hindu Mahar Scheduled Caste, he has suppressed from

the Committee earlier, as alleged by the respondent no.4 that he embraced Christianity. Being a Christian, then, the whole foundation of his claim falls to the ground. Such a conclusion can be reached only when there is solid proof of the petitioner embracing Christianity.

45. All the more, because the petitioner relied on some documents which establish that the Church addressed the communication. At serial no. 26, the Salvation Army, Divisional Headquarter, Tq. Shevgaon, District - Ahmednagar stated in its communication / letter that the petitioner Bhanudas Hona Gajbhiv was not baptized. Thus, no baptism ceremony was held. Equally, Parish Priest, Holy Spirit Church, Shevgaon addressed a communication. It is stated that the petitioner is not a member of the Church. This document is at serial no. 27. Similarly, at serial no. 28, the Headmaster of the Zilla Parishad, Primary School, Erandgaon, Tq. Shevgaon, District-Ahmednagar stated that the school leaving certificate of Sonyabapu Hona Gajbhiv contains an entry in the caste column as Mahar. However, this document was produced by the petitioner after the Vigilance Cell report. Since the contents thereof were not verified, the Committee chose to discard it or omit from consideration. We do not find anything in law, particularly, the Maharashtra Act No. XXIII of 2001 or Rules framed thereunder which prevented the Committee from getting in touch with the Church or the Headmaster and obtaining from them, the clarification whether they stand by the contents of their Certificates issued and attributed to them or otherwise. It is in these circumstances, that the Zilla Parishad school record of Sonyabapu, Kamal Honaji and Bhagwan was extremely relevant. Merely because in these documents, the entries in the caste column are Hindu Mahar, they could not have been discarded and omitted from consideration.

46. We agree with Shri Barlinge that the Committee's order is therefore perverse and vitiated by non-application of mind. Reliance is placed by Shri Barlinge on the two judgments, firstly of the Hon'ble Supreme Court in the case of The Principal, Guntur Medical College, Guntur and others Vs. Y. Mohan Rao, reported in AIR 1976 S.C. 1904. In this case, the Hon'ble Supreme Court held that a person whose parents belonged to a Scheduled Caste before their conversion to Christianity can, on conversion or reconversion to Hinduism, be regarded as a member of Scheduled Caste only if he is accepted as a member of that caste by other members of the caste. On such acceptance, he would be eligible for the benefits of reservation of seats of the Scheduled Castes in the

matter of admission to a medical college. Therefore, a person born of Christian converts would not become a member of the caste to which his parents belonged prior to their conversion to Christianity, on conversion to Hinduism automatically as a matter of course. There has to be material to show that if the other members of the caste accept him as a member and admit him within the fold. However, for that purpose, there has to be proof of a person being born as Christian and converting to Hinduism. It is only then the latter part arises for consideration and not otherwise."

15. In case of ***Kiranlata D/o Wamanrao Sontakke*** cited (supra), a co-ordinate bench of this Court held that merely because husband of petitioner belongs to christian community that by itself is not sufficient to infer that petitioner has abandoned Hindu faith and converted to Christianity.

16. In the case in hand, there is nothing on record to show that, the petitioner has converted to christianity from the '*Hindu Mahar*' religion /caste. The pre-independent document i.e., school leaving certificate issued in the year 1940 in respect of petitioner's uncle as well as death certificate issued in the year 1933 in respect of the petitioner's grandfather demonstrates that the petitioner's ancestral belongs to '*Mahar*' SC community. Therefore, merely the portrait of Yeshu Christ and some tiles of Yeshu Christ picture found in the house of petitioner does not automatically prove that the petitioner has abandoned his caste "*Mahar*" recognized as scheduled caste under schedule caste order,

1950. Needless to say that there was no material before the caste scrutiny committee to discard the petitioner's caste claim. Therefore, the findings recorded by respondent no.2 refuting caste claim of the petitioner is absolutely perverse, arbitrary and capricious. Hence, the impugned order dated 08.07.2013 passed by respondent no.2, caste certificate scrutiny committee, Nashik Division Nashik, needs to be quashed and set aside.

17. It would be appropriate to mention here that during pendency of this petition, the petitioner got superannuated, however, respondent no. 4 refused to forward pension proposal because of his failure to submit caste validity certificate. Since, we are holding that the impugned order dated 08.07.2013 passed by respondent no. 2 is illegal, bad in law, therefore, respondent no. 4 deserves to be directed to prepare and forward pension proposal of the petitioner with the competent authority forthwith.

18. In view of the above discussion, we proceed to pass the following order:

:ORDER:

- (i) The Writ Petition is allowed.
- (ii) The impugned order dated 08.07.2013 passed by respondent no.2, the scheduled caste certificate scrutiny

committee, Nashik Division, Nashik, invalidating caste claim of the petitioner is hereby quashed and set aside.

- (iii) Respondent no.2, the scheduled caste certificate scrutiny Committee Nashik Division Nashik, shall issue caste validity certificate in favour of the petitioner as "*Hindu Mahar*" within three weeks from today.
- (iv) Respondent no. 4 shall prepare and forward pension proposal of the petitioner with the competent Authority forthwith.
- (v) Accordingly, Rule is made absolute in terms of prayer clauses "A" and "D-1".
- (vi) No order as to costs.

[Y. G. KHOBRAGADE, J.]

[MANGESH S. PATIL, J.]