

(2021) 10 KL CK 0087
In the High Court Of Kerala
Case No : Writ Appeal No.827 Of 2021

Central Board Of Secondary Education Rep.By Its Chairma	APPELLANT
Vs	
Revathy Sreedhar	RESPONDENT

Date of Decision : 13-10-2021

Acts Referred:

Citation : (2021) 10 KL CK 0087

Hon'ble Judges : S.Manikumar, CJ;Shaji P.Chaly, J

Bench : Division Bench

Advocate : Nirmal S., James Mathew Kadavan

Final Decision : Disposed Of

Judgement

S. Manikumar, C.J.

1. Challenging the judgment dated 31.10.2019 in W.P.(C) No. 27785 of 2019, this appeal is filed. The writ petitioner/first respondent sought for correction of her date of birth as 18.08.1992 in Ext. P2 mark sheet and Ext. P3 pass certificate issued by the Central Board of Secondary Education, in accordance with Ext. P1 birth certificate issued by the statutory authority.

2. The issue relating to the correction of date of birth in the CBSE certificate is already decided by the Hon'ble Supreme Court in Jigya Yadav v. C.B.S.E. [2021 (3) KLT 711 (SC)], in which it is held as under:

"CONCLUSION AND DIRECTIONS TO CBSE

169. Although we have discussed the broad issues canvassed before us, in the ultimate analysis the real dispute requiring resolution is about the nature of correction or change, as the case may be, permissible to be carried by the CBSE at the instance of the student including past student. As noted earlier, broadly, two situations would arise.

170. The first is where the incumbent wants "correction" in the certificate issued

by the CBSE to be made consistent with the particulars mentioned in the school records. As we have held there is no reason for the CBSE to turn down such request or attach any precondition except reasonable period of limitation and keeping in mind the period for which the CBSE has to maintain its record under the extant regulations. While doing so, it can certainly insist for compliance of other conditions by the incumbent, such as, to file sworn affidavit making necessary declaration and to indemnify the CBSE from any claim against it by third party because of such correction. The CBSE would be justified in insisting for surrender/return of the original certificate (or duplicate original certificate, as the case may be) issued by it for replacing it with the fresh certificate to be issued after carrying out necessary corrections with caption/ annotation against the changes carried out and the date of such correction. It may retain the original entries as it is except in respect of correction of name effected in exercise of right to be forgotten. The fresh certificate may also contain disclaimer that the CBSE cannot be held responsible for the genuineness of the school records produced by the incumbent in support of the request to record correction in the original CBSE certificate. The CBSE can also insist for reasonable prescribed fees to be paid by the incumbent in lieu of administrative expenses for issuing fresh certificate. At the same time, the CBSE cannot impose precondition of applying for correction consistent with the school records only before publication of results. Such a condition, as we have held, would be unreasonable and excessive. We repeat that if the application for recording correction is based on the school records as it obtained at the time of publication of results and issue of certificate by the CBSE, it will be open to CBSE to provide for reasonable limitation period within which the application for recording correction in certificate issued by it may be entertained by it. However, if the request for recording change is based on changed school records post the publication of results and issue of certificate by the CBSE, the candidate would be entitled to apply for recording such a change within the reasonable limitation period prescribed by the CBSE. In this situation, the candidate cannot claim that she had no knowledge about the change recorded in the school records because such a change would occur obviously at her instance. If she makes such application for correction of the school records, she is expected to apply to the CBSE immediately after the school records are modified and which ought to be done within a reasonable time. Indeed, it would be open to the CBSE to reject the application in the event the period for preservation of official records under the extant regulations had expired and no record of the candidate concerned is traceable or can be reconstructed. In the case of subsequent amendment of school records, that may occur due to different reasons including because of choice exercised by the candidate regarding change of name. To put it differently, request for recording of correction in the certificate issued by the CBSE to bring it in line with the school records of the incumbent need not be limited to application made prior to publication of examination results of the CBSE.

171. As regards request for "change" of particulars in the certificate issued by

the CBSE, it presupposes that the particulars intended to be recorded in the CBSE certificate are not consistent with the school records. Such a request could be made in two different situations. The first is on the basis of public documents like Birth Certificate, Aadhaar Card/Election Card, etc. and to incorporate change in the CBSE certificate consistent therewith. The second possibility is when the request for change is due to the acquired name by choice at a later point of time. That change need not be backed by public documents pertaining to the candidate.

(a) Reverting to the first category, as noted earlier, there is a legal presumption in relation to the public documents as envisaged in the 1872 Act. Such public documents, therefore, cannot be ignored by the CBSE. Taking note of those documents, the CBSE may entertain the request for recording change in the certificate issued by it. This, however, need not be unconditional, but subject to certain reasonable conditions to be fulfilled by the applicant as may be prescribed by the CBSE, such as, of furnishing sworn affidavit containing declaration and to indemnify the CBSE and upon payment of prescribed fees in lieu of administrative expenses. The CBSE may also insist for issuing Public Notice and publication in the Official Gazette before recording the change in the fresh certificate to be issued by it upon surrender/return of the original certificate (or duplicate original certificate, as the case may be) by the applicant. The fresh certificate may contain disclaimer and caption/annotation against the original entry (except in respect of change of name effected in exercise of right to be forgotten) indicating the date on which change has been recorded and the basis thereof. In other words, the fresh certificate may retain original particulars while recording the change along with caption/annotation referred to above (except in respect of change of name effected in exercise of right to be forgotten).

(b) However, in the latter situation where the change is to be effected on the basis of new acquired name without any supporting school record or public document, that request may be entertained upon insisting for prior permission/declaration by a Court of law in that regard and publication in the Official Gazette including surrender/ return of original certificate (or duplicate original certificate, as the case may be) issued by CBSE and upon payment of prescribed fees. The fresh certificate as in other situations referred to above, retain the original entry (except in respect of change of name effected in exercise of right to be forgotten) and to insert caption/annotation indicating the date on which it has been recorded and other details including disclaimer of CBSE. This is so because the CBSE is not required to adjudicate nor has the mechanism to verify the correctness of the claim of the applicant.

172. In light of the above, in exercise of our plenary jurisdiction, we direct the CBSE to process the applications for correction or change, as the case may be, in the certificate issued by it in the respective cases under consideration. Even other pending applications and future applications for such request be processed on the same lines and in particular the conclusion and directions recorded hitherto in paragraphs 170 and 171, as may be applicable, until amendment of

relevant Byelaws. Additionally, the CBSE shall take immediate steps to amend its relevant Byelaws so as to incorporate the stated mechanism for recording correction or change, as the case may be, in the certificates already issued or to be issued by it.

173. Accordingly, we dispose of the cases before us with directions to the CBSE as noted in paragraphs 170 to 172 above. No order as to costs."

3. Following the aforesaid decision, this appeal is disposed of directing the appellants to consider the application submitted by the writ petitioner/first respondent for correction of date of birth, as held in the decision in Jigya Yadav (supra).

Writ appeal is disposed of as above.