

(2018) 03 MP CK 0116
In the Madhya Pradesh High Court
Case No : WA.297.2018

Dattatray Musalgaonkar Shastri	Vs	APPELLANT
M.P. Board Of Secondary Education And Another		RESPONDENT

Date of Decision : 21-03-2018

Acts Referred:

Constitution of India — Article 226, 227
Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005
— Section 2(1)

Citation : (2018) 03 MP CK 0116

Hon'ble Judges : SANJAY YADAV, J;ASHOK KUMAR JOSHI, J

Bench : Division Bench

Advocate : MPS Raghuvanshi, Gaurav Mishra

Final Decision : Dismissed

Judgement

With the consent of learned counsel for the parties, the matter is finally heard.

This appeal under Section 2(1) of Madhya Pradesh Uchcha Nayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, is directed against the order

dated 27.11.2017 passed in Writ Petition No.6575/2016.

The Writ Petition No.6575/2016 was directed against the communication dated 30.10.2015 whereby the petitioner was informed that his request for

correction of date of birth in the Higher Secondary School Certificate Examination, 1976, cannot be acceded to from 05.07.1956 to 05.07.1962, after

40 years.

Earlier, the appellant had approached this Court vide Writ Petition No.3341/2016 for a direction for correction of his date of birth in the mark-sheet.

The said Writ Petition was dismissed on 25.07.2016, in the following terms:

â??This writ petition under Article 226 and 227 of the Constitution of India is filed

with the prayer that his date of birth recorded as 5/7/1962 in class 8th marksheet be ordered to be recorded in class 10th mark-sheet, which petitioner claims to have passed from Board of Higher Secondary Education in the year 1976. As such, after 40 years ever since the petitioner passed class 10th examination and was issued mark-sheet, which bears the date of birth as 5/7/1956 is sought to be corrected and date of birth 5/7/1962 be substituted for the one recorded therein. There is no explanation much less plausible explanation forthcoming either in the writ petition or during the course of the arguments justifying such unexplained delay for the aforesaid purpose. Even otherwise, there is nothing on record to suggest that the Board of Higher Secondary Education under law maintains the record of Higher Secondary Examination conducted 40 years ago. Under such circumstances, this Court is unable to accede to the aforesaid prayer and accordingly the writ petition is dismissed on the ground of delay and laches as well as on merits.â??

Writ Appeal No.277/2016 filed against the order dated 25.07.2016 was withdrawn with a liberty to assail the order rejecting the representation. Thus, allowing the order dated 25.07.2016 passed in Writ Petition No.3341/2016 to attain finality. Be that as it may. On a challenge made to the communication dated 30.10.2015 vide Writ Petition 6575/2016, claim has been negated on the following findings:

â??As far as petitioner's contention in regard to initiation of proceeding for correction of date of birth in the year 1976 itself is concerned, that does not inspire any confidence, inasmuch as the petitioner has placed reliance on the date of birth certificate which was issued on 14.6.1994 (Annexure P/2). Similarly, another certificate was issued by Block Education Officer, Shivpuri on 16.07.1993 (Annexure P/4). Therefore, when petitioner is placing reliance on these documents and he had not enclosed any such document including the middle school certificate contained in Annexure P/3 alongwith the applications (Annexure P/6 and P/7), it can not be said that the petitioner had initiated action in time. As has been discussed above, the onus was solely on the petitioner to have discharged the burden as to when he obtained duplicate mark sheet and discovered the fact of error in the date of birth vis-a-vis in original mark sheet as has been submitted by him and since he has failed to discharge the burden even if the liberty granted in

the Writ Appeal is taken into consideration and this petition is taken to be maintainable overlooking the objection taken by the respondents in view of

earlier dismissal of W.P.No.3341/2016, then also on merits, petitioner has failed to convince this court about taking action of correction of date of birth

in time and also the time lag between the so called UPC applications High Court of Madhya Pradesh filed in the year 1976 and 1977 and the proper

application filed on 17.01.1986.

In view of such facts, the contention of the respondents that the application was not moved within the period of three years from the date of

declaration of result and also in the light of the decision of this High Court in the case of Rajbali Singh (supra), this petition deserves to be dismissed

and is hereby dismissed.â??

The relevant clause, pertaining to date of birth, of the order dated 14.01.2015 filed by the Respondent-Board in the Writ Petition stipulates:

2- tUefrFk la'kks/ku %&

tUefrFk la'kks/ku ds izdj.kksa ea fHkUurk ik, tkus ij izFker% e.My esa iwoZ ls miyC/k vfHkys[kksa Â¼ukekadu@ijh{kkQkeZ dh tkudkj@Nk= dks

tkjh d{kk 10oha dh vadlwphÂ½ ds vk/kkj ij la'kks/ku izdj.k v/;{k ds le{k vFkok v/;{k }kjk vf/kd`r vf/kdkjh ds le{k fopkjkFkZ izLrqr fd;k tkosxkA

fo'ks""k ifjfLFkfr;ksa esa mDr vfHkys[kksa ls fHkUu la'kks/ku izdj.k fuEu nLrkostksa ds vk/kkj ij v/;{k ds le{k vFkok v/;{k }kjk vf/kd`r vf/kdkjh ds

le{k fopkjkFkZ izLrqr fd;k tkosxk %&

Â¼iiÂ½ tUefrFk la'kks/ku gsrq izLrqr vkosnu laLFkk izkpk;Z }kjk vxzsf""kr fd;k tk, rFkk layXu nLrkost laLFkk izkpk;Z }kjk

vfHkizekf.kr gksA

Â¼iiiÂ½ Nk= }kjk laLFkk esa izos'k fy, tkus ds le; vfHkHkkod@ikyd }kjk Hkjh xbZ tkudkj dh laLFkk izkpk;Z }kjk izekf.kr izfrA

Â¼iiiiÂ½ laLFkk izkpk;Z o ftyk f'k{kk vf/kdkjh }kjk izekf.kr nkf[kyk [kkfjt iath dh izfrA

Â¼ivÂ½ laLFkk esa izos'k ds le; izLrqr fd, x, iwoZ dh laLFkk ds 'kkyk R;kx ds izek.k i= dh izekf.kr izfrA

Â¼vÂ½ mijksDr izLrqr nLrkostksa esa fHkUurk ik;s tkus ij ,oa 'kkyk NksM+ nsus ds i'Pkk dh xbZ la'kks/ku dh dk;Zokgh ,oa nLrkostks esa vksOg

jkBZfVax gksus ij mls ekU; ugha fd;k tkosxkA

tUeFrFFk la'kks/ku ds izdj.kksa ij ijh{kkQy ?kksf""kr gksus dh fnukad ls 03 o""kZ dh vof/k rd ds izdj.kksa ij fopkj fd;k tk ldsxkAA 03 o""kZ ls vf/kd iqjkus

vkosnu i=ksa ij dksbZ lq/kkj@fopkj ugha fd;k tk,xkA

ftu Nk=ksa dh vadlwPkh esa tUeFrFFk vafdr ugha gks vFkok vafdr tUeFrFFk vFkZghu gks A¼mnkgj.k ds fy, 31 flrEcj] 31 vizsy] Qjogh 29 dh u gksus ij

Hkh vadlwph esa 29 Qjogh vafdr gksuk vkfnA½ bl izdkj ds la'kks/ku esa 03 o""kZ dh le;kof/k dk ca/ku ugha gksxkA

The issue as is raised in present case came up for consideration before the Single Bench of this Court in Rajbali Singh Vs. Board of Secondary

Education, Bhopal [2001 (3) MPLJ 276] wherein while dwelling upon the similar issue, it has been held:-

â??7. On a bare reading of the aforesaid Rules it is absolutely clear that certain stages are provided for correction or change in the date of birth. Rule

9 makes it categorically clear that no application in regard to date of birth shall be entertained either under Rule 7 or 8 after the form for the Board's

examination at the end of secondary level of education has been sent to the Board or after the student has left the school, if the student has not

pursued education upto the end of secondary standard. Thus, the school authorities have no power to rectify the mistake after the forms are sent to

the Board. On a perusal of the Rules it is graphically clear that there is no provision for correction of date of birth by the Board. In absence of any

provision in the Rules the Board is entitled under law to provide guidelines for correction of date of birth. The Board has framed guidelines which have

been brought on record as Annexure P-2. The said guidelines provide that on compliance of certain formalities there can be rectification of the date of

birth. It has been laid down therein that the prayer for rectification or correction of date of birth would not be accepted after three years. Submission

of Mr. Jain, learned senior counsel is that in absence of any limitation in the Rules the Board could not have provided a period of limitation in the

guidelines. In my considered opinion as the Rules do not deal with the period of limitation the Board has the authority to stipulate a time limit for

correction of the date of birth and I do not perceive any error in such a provision.

8. The next submission of Mr. Jain is that the petitioner after coming to know about the error made a representation to the Board in quite promptitude

and there is no delay and therefore, he cannot be deprived of the benefit on the

ground of delay and laches. Learned counsel has drawn the inspiration from the decision rendered in the case of S.C. Verma (supra). In the aforesaid case the Division Bench has dealt with the correction of date of birth relating to a Central Government employee and has interpreted the provisions under Rule 56 of the Fundamental Rules. The Division Bench to reach its conclusions has placed reliance on the decision rendered in the case of Union of India v. Harnam Singh, AIR 1993 SC 1367. The learned Chief Justice speaking for the Court has come to hold that as there was discrimination in view of the law laid down in the case of Harnam Singh (supra) the order passed by the Central Administrative Tribunal was susceptible and required to be interfered with. In my considered opinion the factual matrix of the aforesaid case is quite different from the present one. In the case at hand, the Board has its own guidelines and the petitioner has approached the Board after three and a half decades.

The enormous delay clearly establishes that the fault on the part of the petitioner is colossus. It is well settled in law that a litigant who is not vigilant, is not entitled to any relief. At this juncture, I think it apposite to refer to a passage from Harnam Singh (supra) wherein their Lordships expressed thus : "A Government servant who has declared his age at the initial stage of employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the Rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the Courts and Tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has

to be applied with all its rigour and the Courts or Tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.

(emphasis supplied)

From the aforesaid pronouncement of law, it is quite vivid that unless the requisite application is submitted within the prescribed period the litigant has to suffer on the ground of delay and laches. In this context, I may profitably refer to the order passed in Santosh Kumar Shukla (supra) wherein C.K.

Prasad, J. has held as under :--

In any view of the matter, petitioner has asked for correction of his date of birth by filing an application after 19 years of the issuance of the

certificate, on this ground alone, I am of the opinion that the petitioner is not entitled for the relief prayed for in the writ petition.

Thus the lid buried in the coffin, cannot rise like a phoenix.

9. Mr. V.K. Shukla, learned counsel for the Board has also drawn the attention of this Court to the Note appended in the Annexure P-4, which reads

as under :-

In case of any discrepancy this mark-sheet should be returned immediately to the Secretary pointing out the error in a separate forwarding memo.

There is nothing on record to point out that the school authorities brought it to the notice of the Board that the date of birth of the petitioner was

erroneously mentioned in the marksheet. Even if the stand of the petitioner is accepted the school authorities could not have changed the date of birth

of the petitioner as the same was within the domain of the Board even before the 1973 Rules came into force. Thus, submission of Mr. Jain that when

the school authorities had corrected the date of birth of the petitioner, it was incumbent on the Board to carry out the rectification, does not merit

consideration.â??

In the case at hand, the petitioner after 40 years of the declaration of result had taken steps seeking correction in date of birth.

In view of these facts, the Board was within its jurisdiction to reject the representation for correction of date of birth in the mark sheet after 40 years,

which, in our humble opinion, is rightly upheld by learned Single Judge.

In the result, appeal fails and is dismissed.

No costs.