

(2021) 01 SHI CK 0253

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 93 Of 2017

Laxmi Singh Verma

APPELLANT

Vs

HP Board Of School Education And Anr

RESPONDENT

Date of Decision : 04-01-2021

Acts Referred:

Himachal Pradesh. Financial Rules, 2009 — Rule 7.1, 7.1 (d), 14.7.1
Code Of Civil Procedure, 1908 — Section 100
Specific Relief Act, 1963 — Section 34, 38, 39

Citation : (2021) 01 SHI CK 0253

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : P.S. Goverdhan, Lovneesh Kanwar

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Instant regular second appeal filed under Section 100 CPC, lays challenge to the judgment and decree dated 6.1.2017, passed by the learned

District Judge, Solan, District Solan, H.P., in CA No. 31-S/13 of 2015, titled Laxmi Singh Verma v. HP Board of School Education Dharamshala,

affirming the judgment and decree of dismissal dated 29.5.2015 passed by the learned Civil Judge (Jr. Div.), Solan, in CS No. 480/1/14/111, whereby

suit for declaration, mandatory and permanent prohibitory injunction filed by the appellant-plaintiff (herein after referred to as "the plaintiff"),

seeking therein declaration that date of birth of the plaintiff is 13.2.1964 and not 13.2.1963 as has been wrongly mentioned in the matriculation

certificate.

2. For having bird's eye view, certain undisputed facts as emerge from the

record are that the plaintiff filed a suit under Sections 34, 38 and 39 of Specific Relief Act, 1963 in the court of learned Civil Judge (Jr. Div.) Court No.2 Solan District Solan, H.P., for declaration, mandatory and permanent prohibitory injunction, averring therein that the plaintiff was born on 13.2.1964 and such fact after his birth was got recorded by his parents in the records of local Gram Panchayat Deothi, Tehsil Rajgarh, District Sirmaur, H.P. Plaintiff averred that his parents also got entered the date of birth of other children in the record of Panchayat including his elder brother, who was born on 15.6.1962. Plaintiff averred in the suit that on account of bonafide and inadvertent mistake, parents of the plaintiffs, who are rustic, simpleton and illiterate villagers, wrongly got his date of birth recorded as 13.2.1963 while admitting him in school, as a consequence of which, his date of birth, wrongly came to be recorded in the school records as 13.2.1963 instead of his actual date of birth i.e. 13.2.1964. Aforesaid mistake committed at the time of the admission in the school remained unnoticed till the time plaintiff in December, 2009 visited his village to attend a meeting convened in Panchayat, as a consequence of which, date of birth of the petitioner came to be recorded as 13.2.1963 in class 8th as well as matriculation examination certificates. Plaintiff averred in the suit that in December, 2009, he got an occasion to see original records of Panchayat while he had gone there to attend some meeting. Plaintiff immediately after having noticed factum with regard to wrong recording of his date of birth in the school records made a representation dated 29.4.2010 (Ext.PW1/B), to the Secretary, Himachal Pradesh Board of School Education (defendant No.1), praying therein to correct his date of birth from 13.2.1963 to 13.2.1964 in the middle as well as matriculation Certificates. However, aforesaid representation of the plaintiff came to be rejected vide communication dated 31.5.2010 sent under the signatures of Assistant Secretary, Himachal Pradesh Board of School Education (Ext.PW1/D) on the ground that as per rules of the Board, there is no provision to make correction of date of birth in certificate of 8th standard, rather such correction is only made in the 10th certificate. Aforesaid authority vide aforesaid communication also apprised the plaintiff that since he has requested for correction of his date of birth on the basis of record of Panchayat, his prayer for correction cannot be acceded to in terms of rules occupying the field,

rather for this purpose, he is required to approach the appropriate court of law in terms of Examination Regularizations Chapter-14, Rule 14.7.1.

Immediately, after having received aforesaid communication from the defendant-Board, plaintiff filed suit at hand in the competent court of law

making therein averments as well as relief as have been taken note herein above.

3. Defendants by way of written statement refuted claim of the petitioner on the ground of limitation, non-joinder and misjoinder of necessary parties.

On merits, defendants claimed that date of birth of the plaintiff was recorded as 13.2.1963 in his service book on the basis of matriculation

examination certificate, which was made available by him at the time of his selection. Besides above, defendant claimed before the court below that

prayer for correction of date of birth cannot be accepted at this belated stage in terms of provisions contained in Himachal Pradesh Financial Rules,

which specifically provides that prayer, if any, for correction of date of birth in service records is to be made within a period of two years from the

date of his entry in the government service. Lastly, defendants claimed that defendant-Board records the particulars in the certificate on the basis of

admission forms as filled up by the candidates and countersigned by the school authorities and as such, they are also required to be impleaded as a

party respondent. With the aforesaid submissions, defendants sought dismissal of the suit.

4. Plaintiff by way of replication while refuting the averments made in the written statement re-affirmed the averments made in the plaint and court

below on the basis of perusal of pleadings adduced on record by the respective parties framed following issues:

1. Whether the correct date of birth of the plaintiff, Sh. Laxmi Singh Verma, is 13.2.1964 and not 13.2.1963, as alleged? OPP

2. Whether the plaintiff is entitled to the decree for permanent prohibitory injunction against the defendants, as alleged? OPP

3. Whether the plaintiff is entitled to decree for mandatory injunction against the defendants, as alleged? OPP

4. Whether the plaint is barred by limitation? OPD

5. Whether the suit is bad for non-joinder of parties, as alleged? OPD

6. Whether present suit is filed at belated stage and is not maintainable, as alleged? OPD.

7. Relief.

5. Subsequently, learned trial Court below decided all the issues save and except issues No. 5 and 6 against the plaintiff and dismissed the suit of the

plaintiff primarily on the ground of delay and laches . Issue No. 5 with regard to non-joinder of the parties was not pressed by the defendants and as

such, same was disposed of as not pressed.

6. Being aggrieved and dissatisfied with the aforesaid judgment of dismissal recorded by the learned trial court, plaintiff preferred an appeal in the

court of learned District Judge Solan, which also came to be dismissed vide judgment dated 6.1.2017. In the aforesaid background, plaintiff has

approached this Court in the instant proceedings, praying therein to allow his suit in its entirety after setting aside impugned judgments and decrees

passed by the courts below.

7. Aforesaid appeal having been filed by the plaintiff came to be admitted by a co-ordinate Bench of this Court on 2.8.2017, on following substantial

question of law

â??Whether on account of misreading, mis-appreciation and misconstruction of the law and facts as well as the oral and documentary

evidence available on record, the judgment and decree under challenge in the main appeal being perverse and vitiated is not legally

sustainable?â??

8. Having heard learned counsel for the parties and perused pleadings adduced on record by the respective parties vis-Ã -vis reasoning assigned by

the courts below while dismissing the suit for declaration filed by the plaintiff, this Court finds substantial force in the submissions made by Mr. P.S.

Goverdhan, learned counsel for the appellant-plaintiff, that courts below have miserably failed to appreciate the evidence as well as rules framed by

the defendant-board with regard to correction of date of birth in his 8th and 10th certificates and as such, prayer made on behalf of the plaintiff in the

instant proceedings deserves to be considered.

9. Mr. Lovneesh Kanwar, learned counsel representing the defendant while vehemently arguing that though there is overwhelming evidence adduced

on record suggestive of the fact that representation having been made by the plaintiff, praying therein defendants to correct his date of birth in his

service book or official record was time barred and no plausible explanation ever came to be rendered on record on behalf of the plaintiff with regard

to delay in approaching authorities with a prayer to correct his date of birth, contended that even otherwise appeal having been filed by the plaintiff

deserves outright rejection being not maintainable against concurrent finding of fact and law recorded by the courts below. While placing reliance upon

the judgments passed by the Honâ??ble Apex Court in Narendra Gopal Vidyarthi vs. Rajat Vidyarthi, (2009)3 SCC 287, (2000)3 SCC 70 8and

Laxmidevamma and Others vs. Ranganath and Others, (2015)4 SCC 264, Mr. Kanwar, forcibly contended that present appeal is not maintainable

because this Court while exercising power under Section 100 CPC has very limited scope to up-set/re-appreciate the concurrent findings of fact and

law recorded by the courts below, especially when plaintiff has not been able to show any perversity in the same and as such, same deserves to be

quashed and set aside.

10. Since specific objection with regard to maintainability of present appeal, in view of concurrent findings of fact recorded by Courts below, has been

taken by the defendants, this Court deems it necessary to deal with the same at first instance before exploring answer, if any, to the substantial

question of law formulated hereinabove. Though learned counsel representing the defendants has placed reliance upon the judgments, as have been

taken note above, this Court deems it proper to take into consideration latest judgment passed by Honâ??ble Apex Court in Laxmidevammaâ??s

case supra, wherein it has been held as under:-

â??16. Based on oral and documentary evidence, both the courts below have recorded concurrent findings of fact that the plaintiffs have

established their right in A schedule property. In the light of the concurrent findings of fact, no substantial questions of law arose in the High

Court and there was no substantial ground for reappraisal of evidence. While so, the High Court proceeded to observe that the first

plaintiff has earmarked the A schedule property for road and that she could not have full-fledged right and on that premise proceeded to

hold that declaration to the plaintiffsâ?? right cannot be granted. In exercise of jurisdiction under Section 100 CPC, concurrent findings of

fact cannot be upset by the High Court unless the findings so recorded are shown

to be perverse. In our considered view, the High Court did not keep in view that the concurrent findings recorded by the courts below, are based on oral and documentary evidence and the judgment of the High Court cannot be sustained.â?? (p.269)

11. Perusal of the aforesaid judgment suggests that in exercise of jurisdiction under Section 100 CPC, concurrent findings of fact cannot be upset by

the High Court unless the findings so recorded are shown to be perverse. This Court, after having taken note of observations made by Honâ??ble

Apex Court in judgment supra, sees no reason to differ with the argument having been made by learned counsel representing the defendants that in

normal circumstance concurrent findings of fact recorded by Courts below should not be interfered with by the High Courts, rather High Courts, while

exercising powers under Section 100 CPC, are restrained from re-appreciating the evidence available on record. But, aforesaid judgment passed by

Honâ??ble Apex Court, nowhere suggests that there is complete bar for High Courts to upset the concurrent findings of the Courts below, especially

when finding recorded by Courts below appears to be perverse.

12. It is well settled by now that a finding of fact itself may give rise to a substantial question of law, inter alia, in the event the findings are based on

no evidence and/or while arriving at the said findings, relevant admissible evidence has not been taken into consideration or inadmissible evidence has

been taken into consideration or legal principles have not been applied in appreciating the evidence, or when the evidence has been misread. In this

regard, reliance is placed upon the judgment of Honâ??ble Supreme Court in Chandna Impex Private Limited vs. Commissioner of Customs, New

Delhi, (2011)7 SCC 289, wherein the Honâ??ble Apex Court has held as under:-

â??14. In Hero Vinoth Vs. Seshammal, (2006)5 SCC 545, referring to the Constitution Bench decision of this Court in Sir Chunilal V.

Mehta & Sons Ltd. Vs. Century Spg. & Mfg. Co.Ltd., AIR 1962 SC 131 4a,s also a number of other decisions on the point, this Court culled

out three principles for determining whether a question of law raised in a case is substantial. One of the principles so summarised, is : (Hero

Vinoth case, SCC p.556, para 24)

24.(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule.

Some of the well-recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts

have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.

When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers

to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding". (p.294)

13. Hon'ble Apex Court in D.R. Rathna Murthy vs. Ramappa, (2011) 1 SCC 158, has specifically held that High Court can interfere with the

findings of fact even in the second appeal, provided the findings recorded by Courts below are found to be perverse. It has further been held in the

case supra that there is no absolute bar on the re-appreciation of evidence in those proceedings; however, such a course is permissible in exceptional

circumstances. The Hon'ble Apex Court has held as under:-

"9. Undoubtedly, the High Court can interfere with the findings of fact even in the Second Appeal, provided the findings recorded by the

courts below are found to be perverse i.e. not being based on the evidence or contrary to the evidence on record or reasoning is based on

surmises and misreading of the evidence on record or where the core issue is not decided. There is no absolute bar on the re-appreciation of

evidence in those proceedings, however, such a course is permissible in exceptional circumstances. (Vide Rajappa Hanamantha Ranoji v.

Mahadev Channabasappa, (2000)6 SCC 120; Hafazat Hussain v. Abdul Majeed, (2001) 7 SCC 189 and Bharatha Matha & Anr. v. R.

Vijaya Renganathan, (2010)11 SCC 483.)" (p.162)

14. Hon'ble Apex Court in Santosh Hazari vs. Purushottam Tiwari (Deceased) By LRs., (2001)3 SCC 17,9 has held that appellate Court ought

not to interfere with the findings of trial Judge on a question of fact unless the latter has overlooked some peculiar feature connected with evidence of

a witness or such evidence on balance is sufficiently improbable so as to invite displacement by appellate Court.

15. Careful reading of aforesaid law laid down by Hon'ble Apex Court clearly suggests that there is no blanket bar for High Courts to upset the

concurrent findings of Courts below, especially when it emerge from the record

that (i) the Courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. Honâ??ble Apex Court in Sebastiao Luis Fernandes (Dead) through LRs and Others vs. K.V.P. Shastri (Dead) through LRs and Others, (2013)15 SCC 161, has held as under:

â??35. The learned counsel for the defendants relied on the judgment of this Court in Hero Vinoth v. Seshammal, (2006)5 SCC 545,

wherein the principles relating to Section 100 of the CPC were summarized in para 24, which is extracted below : (SCC pp.555- 56)

â??24. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a

question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when

there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law

having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a

substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents,

and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear,

either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting

contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but

because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some

of the well-recognized exceptions are where (i) the courts below have ignored

material evidence or acted on no evidence;

(ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the

burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence,

but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding. We have to place

reliance on the afore-mentioned case to hold that the High Court has framed substantial questions of law as per Section 100 of the CPC, and

there is no error in the judgment of the High Court in this regard and therefore, there is no need for this Court to interfere with the same.

(pp.174-175)

16. It is quite evident from the aforesaid exposition of law that even concurrent findings of fact recorded by Courts below can be interfered with/upset

by the High Courts, while exercising power under Section 100 CPC, if it is convinced that findings recorded by Courts below are not based upon any

evidence and same are perverse. At this stage, it may be noticed that during the proceedings of the case, learned counsel representing the appellant-

plaintiff was able to point out certain material irregularities/illegalities committed by Courts below, while examining/analyzing the evidence adduced on

record by both the parties and as such this Court deems it proper to examine the pleadings/evidence adduced on record by the respective parties in

support of their respective claim so that correctness and genuineness of arguments made by learned counsel to the effect that judgments passed by

Courts below are wholly perverse, is ascertained.

17. Now being guided with the aforesaid settled proposition of law, this Court would proceed to ascertain the correctness and genuineness of the

submissions made by the learned counsel for the plaintiff that court below have mis-appreciated and misconstrued the evidence as well as rule

governing the fields with regard to correction of date of birth in the respondent-department.

18. It is the own case of the plaintiff as set out in the plaint that his parents after his birth on 13.2.1964 rightly got his date of birth recorded as

13.2.1964 in the concerned gram panchayat, but at the time of admission, inadvertently, the same came to be recorded by them as 13.2.1963 in school

records, as a consequence of which, date of birth of the plaintiff came to be shown as 13.2.1963 in 8th and 10th Class examination conducted by the board of school examination. It is also not in dispute that plaintiff joined office of department-Board on 3.10.1987 as clerk and his date of birth was recorded on the basis of matriculation certificate. Plaintiff has neither claimed nor has disputed that he after his selection had furnished matriculation examination containing his date of birth as 13.2.1963, rather plaintiff has claimed that inadvertent mistake committed by his parents at the time of his admission in school remained unnoticed till December, 2009 by which time, he had already passed class 8th and 10th examination conducted by the defendant Board. Pleadings adduced on record by the plaintiff, which defendants have not been able to rebut, show that factum with regard to wrong entry of date of birth in school records came to the knowledge of the plaintiff in December, 2009, when he happened to visit his gram Panchayat in connection with some meeting. It is also not in dispute inter-se parties that immediately after having discovered factum with regard to wrong entry of date of birth in school records, plaintiff filed representation (Ex.PW1/B) to the Secretary, Himachal Pradesh Board of School Education. Perusal of aforesaid exhibit, which stands duly proved on in accordance with law, clearly reveals that plaintiff claimed before the respondent-board that his date of birth has been wrongly shown in the middle standard as well as matriculation certificates as 13.2.1963, whereas correct date of birth is 13.2.1964 as is evident from Part-1 of Gram Panchayat Deaothi, Majhgaon, Tehsil Rajgarh, District Sirmaur, H.P. In the aforesaid communication, plaintiff has categorically stated that he discovered the fact with regard to his wrong entry of date of birth in records in December, 2009 when a meeting of Census 2011 took place at Gram Panchayat Deothi Majhaon, Tehsil Rajgarh, District Sirmour, H.P. Pleadings as well as evidence adduced on record by the respondent-Board nowhere suggest that effort, if any, ever came to be made at the behest of the respondent-board to verify the correctness and genuineness of the contents contained in the aforesaid communication Ext.PW1/B, rather respondent Board vide communication dated 31.5.2010 Ext.PW1/D informed the plaintiff that correction, if any of date of birth is only made in the certificate of 10th class, not in 8th class and his prayer for correction of date of birth cannot be acceded on the basis of Panchayat record, rather for that purpose, he may have to approach the court of law in

terms of Examination Regulations, Chapter 14, Rule 14.7.1, which provide that an application regarding change in date of birth may be considered on payment of prescribed fee provided the change has been admitted in the court of law. It further stands proved in the case at hand that plaintiff after receiving aforesaid communication, approached the competent court of law by way of CS No. 480/1/14/111, which interestingly came to be refuted/contended by the respondent defendant on the ground that it has no power to effect change of date of birth in the service book, rather such power vests in court, but written statement filed by the defendants, if perused in its entirety, it clearly reveals that claim of the plaintiff came to be refuted on the ground that since plaintiff approached the respondent board after a considerable delay, prayer cannot be acceded to. In support of aforesaid contention, though plaintiff placed on record certain documents alongwith its reply as Annexures D1, D2, D3 and D4, but same never came to be tendered in evidence and as such, cannot be read as evidence in support of the pleadings. Otherwise also, perusal of Annexure D-1 available at page-41 of learned trial court file reveals that clause 7.1 (d) of HP Finance Rules, 2009 though provides for correction of date of birth in service records, but prayer for such correction, if any, can be made within a period of two years from the date of entry in the government service. It would be apt to take note of provision contained in 7.1 (d), which reads as under:-

7.1 (d) (1) in regard to the date of birth a declaration of age made at the time of or for the purpose of entry into Government service, shall as against the Government servant in question, be deemed to be conclusive unless he applies for correction of his age as recorded within 2 years from the date of his entry into Government service. Government, however, reserves the right to make a correction in the recorded age of the Government servant at any time against the interest of that Government servant when it is satisfied that the age recorded in his service book or in the history of service of a gazetted Government servant is incorrect and has been incorrectly recorded with the object that the Government servant may derive some unfair advantage therefrom.

(2) When a Government servant, within the period allowed, makes an application for the correction of his date of birth as recorded, an inquiry shall be made to ascertain his correct age and reference shall be made to

all available sources of information such as certified

copies of entries in the Municipal birth register. University or School age certificates, JANAMPATRI (horoscope) as the case may be. It

should, however, be remembered that it is entirely discretionary on the part of the sanctioning authority to refuse or grant such application

on being satisfied and no alteration should be allowed unless it has been satisfactorily proved that the date of birth as originally given by the

applicant as a bona fide mistake and that he has derived no unfair advantages therefrom. In case the matriculation certificate is available,

the date of birth recorded in the certificate will be deemed to be the correct age.

(3) The result of every such inquiry should in the case of Gazetted/Non-Gazetted Government servants be briefly stated in their service

cards/service books and if correction is sanctioned, the fact should be reported to the Accountant General.â??

19. Plaintiff, in the case at hand, with a view to prove issues No. 1, 2 and 3 and substantiate his claim examined himself as PW1 through his affidavit

Ext.PW1/A. Plaintiff while successfully proving contents of the plaint also proved various documents i.e. application dated 29.4.2010 Ext.PW1/B,

receipts Ex.PW1/C, letter dated 31.5.2010, Ext.PW1/D, certificate from Gram Panchayat Deothi, Mark-A. Factum with regard to filing of

representation on 29.4.2010 stands proved on record by way of Ext.PW1/B, but even otherwise, cross-examination conducted on this witness by the

defendants, if perused, it reveals that such representation was duly acknowledged and replied by the respondent-Board vide communication dated

31.5.2020 Ex.PW1/D.

20. Mr. Inder Singh, Panchayat Secretary, Gram Panchayat Deothi, Majhgaon, Tehsil Rajgarh, District Sirmaur, H.P., while deposing as PW2

produced Pariwar Register and deposed that in pursuance of entry made in the Pariwar Register documents Ext.PW2/A certifying therein date of

birth of the plaintiff as 13.2.1964 was issued by the concerned gram Panchayat. He specifically denied suggestion put to him that he has prepared a

false certificate in connivance with the plaintiff. Interestingly, defendants did not lead any evidence to refute the claim of the plaintiff. However,

learned trial court below merely by recording that plaintiff has to prove its case by standing on his own legs for no cogent reasons completely ignored

the evidence led on record by the plaintiff and side tracked the main issue. Interestingly, learned trial court while dismissing the suit filed by the plaintiff without there being any occasion returned finding that the plaintiff has not been able to prove that real injustice has been caused to him on account of rejection of his claim for correction of his date of birth. It is also not understood that on what basis, learned trial court arrived at a conclusion that plaintiff has failed to show that there is any genuine threat to his legal status qua the alleged wrong date of birth in the school records, probably, forgetting that correction, if any, of date of birth in certificates would entitle the plaintiff to make representation for correction in service records and in case, such prayer is accepted, he would get one more year of employment. Learned trial court below has gone astray while going into the question of imminent necessity for such change and court below in suit for declaration ought not have or was not required to go into this aspect of the matter, rather it on the basis of pleadings as well as evidence led on record is /was expected to decide whether original date of birth of the plaintiff is 13.2.1964 or 13.2.1963. Interestingly, court below rejected the claim of the plaintiff on the ground that he failed to place on record school marks certificate/records qua which change/correction is sought for correction of date of birth forgetting that there is/was no dispute inter-se parties that on certificates of 8th and 10th class, date of birth of the plaintiff has been mentioned as 13.2.1963 and plaintiff placing reliance upon record of gram Panchayat i.e. pariwar register, approached the court of law seeking declaration that his original date of birth is 13.2.196,4 but not 13.2.1963.

21. Court below while ignoring statement of PW2 Mr. Inder Singh i.e. Panchayat Secretary, wherein he deposed that birth certificate was issued by him on the basis of pariwar register, proceeded to record a finding that evidence is silent as to whether register had authenticated entries therein as regards the date of birth. Once aforesaid witness, by placing on record pariwar register, successfully proved Ext.PW2/A i.e. certificate of date of birth certifying the date of birth of the plaintiff to be 13.2.1964, onus, if any, to refute the correctness of aforesaid certificate was on respondent-department. Plaintiff by successfully proving certificate Ext.PW2/A discharged his onus as far as correctness and genuineness of the certificate with regard to date of birth of the plaintiff. However, respondents neither in written statement nor by way of evidence have been able to rebut aforesaid

evidence. No suggestion, if any, qua the aforesaid aspect of the matter ever came to be put to PW2 in cross-examination.

22. Leaving everything aside, this Court finds from the pleadings adduced on record by the respective parties that though at initial stage, plaintiff by

way of representation Ex.PW1/B, requested the respondent board to correct his date of birth from 13.2.1963 to 13.2.1964, but such request of him

never came to be declined on the ground of delay and laches, rather careful perusal of order dated 31.5.2010 Ext.PW1/D sent by the respondent

board in response to representation dated 29.4.2010 Ext.PW1/B clearly suggests that respondent board expressed its inability to carry out correction in

date of birth of the plaintiff in the matriculation certificate on the basis of Panchayat record and while referring to Examination Regulations, Chapter-

14, Rule 14.7.1 itself advised the plaintiff to approach the court of law for the change of date of birth, however, subsequently, in the written statement

placed reliance upon provisions contained under the Himachal Pradesh Financial Rules for denying the claim of the plaintiff. Provisions contained in

para 7.1, wherein admittedly period of two years from the date of joining service has been provided for making an application for correction already

stands reproduced in afore paras of the judgment, but this court is afraid that provisions contained in HP Financial Rules would apply in the case of the

plaintiff, especially when his representation dated 29.4.2010 Ext.PW1/B came to be rejected vide communication dated 31.5.2010 (Ex.PW1/D) on the

ground that respondent board is not competent to carry out correction of date of birth in matriculation certificate, rather such power lies with court of

law. Obviously, it would be apt to take note of the examination Regulations Chapter 14, Rule 14.7.1., which reads as under:

“Applications regarding change in date of birth may be considered on payment of prescribed fee provided the change has been admitted

in a Court of law. Ordinarily, in such Court Cases the Board may not defend the proceedings even if the Board is made a party to such

proceedings”

23. Careful perusal of aforesaid provision of law clearly reveals that application, if any, with regard to change in date of birth could be considered by

the respondent board on payment of prescribed fee subject to the condition that the change has been admitted in a court of law. It has been

specifically provided under the aforesaid provision of law that ordinarily, in such cases, the Board may not defend the proceedings even if the Board is made a party to such proceedings. Aforesaid provision, if read in its entirety, clearly reveals that order, if any, made by the court of law with regard to change of date of birth, would be acceptable by the respondent board and it is not required to defend such proceedings even, if it is made party in such proceedings.

24. Careful perusal of judgment passed by the learned District Judge reveals that learned first appellate court below on the basis of totality of evidence collected on record by the plaintiff though returned specific finding that in view of the evidence, which remained un-rebutted, it is established that the date of birth of the plaintiff in the Panchayat records is 13.2.1964, whereas in the middle as well as matriculation certificates, his date of birth is recorded as 13.2.1963 and even in the service records, the date of birth of the plaintiff is 13.2.1963, which is contrary to the entry made in the Panchayat records.

However, court below despite having recorded aforesaid finding proceeded to reject the claim of the plaintiff on the ground of delay and laches, whereas evidence led on record by the plaintiff, if read in its entirety clearly reveals that plaintiff successfully proved that he immediately after having acquired knowledge that his original date of birth is 13.2.1964 approached the respondent-Board for correction, who vide communication dated 31.5.2010, advised him to approach the court of law. Leaving everything aside, if prayer made by the plaintiff in his suit is perused, he did not seek correction of his date of birth in service records, rather sought correction of his date of birth in the middle and matriculation certificate issued by the respondent-Board. Learned District judge while placing reliance upon the Rule 7.1 (d) of HP Financial Rules, which otherwise could not have been placed reliance in the case of the plaintiff on account of contents contained in communication dated 31.5.2010 Ext.P1/D, rejected the claim of the plaintiff on the ground of limitation. If the relief, as has been sought by the plaintiff, is examined vis-à-vis provisions contain in Rule 7.1 (d) of the Himachal Pradesh Financial Rules, learned counsel for the plaintiff is right in contending that Rule 7.1 of the Himachal Pradesh Financial Rules could not be made applicable because at no point of time, prayer, if any, ever came to

be made on behalf of the plaintiff to correct his date of birth in the service records, rather plaintiff by way of suit while seeking declaration that his date of birth is 13.2.1964, specifically prayed for decree of mandatory injunction directing the defendants to rectify the date of birth of the plaintiff from 13.2.1963 to 13.2.1964 in the middle and matriculation certificates of the plaintiff, and to grant decree of permanent prohibitory injunction restraining the defendants to issue any certificate or document showing wrong date of birth of the plaintiff.

25. In view of the relief as prayed for by the plaintiff in the suit provisions of Rule 7.1 of Himachal Pradesh Financial Rules could not have been made

applicable in the case of the plaintiff, rather courts below in the totality of evidence led on record ought to have decided the suit on its own merits.

Learned first appellate Court below wrongly placed reliance upon judgment rendered by this Court in State of HP v. Mor Dhawaj, 2009 (1) SLJ (HP)

167, while dismissing the appeal filed by the plaintiff because bare perusal of the facts of that case nowhere suggests that same are identical to the

case of the plaintiff. In the aforesaid judgment, this court held that while considering prayer for correction of date of birth, court should keep in mind

that the correction of date of birth of a public servant may adversely affect the chances of the promotion of the government servants and the period

within which correction can be sought, if prescribed under the statutory rules or in absence thereof under the Administrative instructions should be

followed. In the aforesaid judgment, this Court has held that in the absence of rules/instructions, correction may be sought within reasonable time. If

the facts of the case of the Mor Dhawaj (supra) are perused, it suggest that petitioner in that case was appointed as JBT in the Education department

of Himachal Pradesh on 2.1.1958 and in that capacity, he worked at different places. He made representation on 12.8.1992 for correction of his date

of birth, which was rejected on 25.2.1993. In 1993, petitioner in that case approached the learned Erstwhile HP State Administrative Tribunal, who

vide order dated 26.6.1993 directed the State Government to treat the same as representation and decide the same within a period of four months.

Since representation was rejected, respondent again approached the learned Tribunal, who in turn allowed the original application filed by the petitioner

in that case and directed the correction of the date of birth of the petitioner,

however, subsequently, a coordinate Bench of this Court in the aforesaid case while reversing the finding returned by the learned Tribunal held that prayer for correction of date of birth could not have been entertained by the learned Tribunal at such a belated stage. If the facts of the case of the plaintiff in the instant case are perused, by no stretch of imagination, it can be said that he approached the court of law for correction of date of birth at belated stage, rather evidence as well as pleadings adduced on record by the plaintiff, which remain un-rebutted clearly reveal that plaintiff immediately after having discovered factum with regard to wrong entry of his date of birth approached the department in the year, 2009, praying therein for correction of his date of birth in 8th and 10th class certificates and such request of him was never declined on the ground of delay and laches. Respondent-Board vide communication dated 31.5.2010 Ext.PW1/D itself advised the plaintiff to approach the court of law. Since no prayer, if any, ever came to be made on behalf of the plaintiff with regard to correction of his date of birth in his service record, both the courts below erred while placing reliance upon the Rule 7.1 (d) of HP Financial Rules for rejecting the claim of the plaintiff, rather in the case at hand, case of the plaintiff ought to have been considered in terms of provision contained in Examination Regulation Rules, which clearly provides that necessary prayer for correction of date of birth in middle and matriculation certificate can be only made on the basis of declaration/order of the court of law.

26. This Court having carefully scanned the entire evidence as well as pleadings adduced on record vis-À-vis reasoning assigned by the courts below while rejecting the suit of the plaintiff, has no hesitation to conclude that both the courts below miserably failed to appreciate the evidence rather both the courts below side tracked the main issue and wrongly non-suited the plaintiff on the ground of delay and laches. Since this Court is convinced and satisfied that both the courts below misrepresented, mis-appreciated and misconstrued the pleadings as well as evidence adduced on record by the plaintiff, judgments and decrees passed by the courts below are vitiated being perverse. Since there is a complete perversity in the judgments passed by the courts below, this Court in light of various pronouncements as have been referred herein above, is well within its jurisdiction to set aside the concurrent finding of facts and law recorded by the courts below. Substantial

question of law is answered accordingly.

27. Consequently, in view of the detailed discussion made herein above as well as law relied upon, present appeal is allowed and judgments passed by

the courts below are quashed and set-aside being perverse and suit of the plaintiff for declaration is decreed in its entirety and it is held that the date of

birth of the plaintiff is 13.2.1964 and not 13.2.1963 and as such, defendant-Board is directed to carry out necessary corrections in the middle as well

as matriculation certification forthwith. Respondent-Board is further restrained by way of permanent prohibitory injunction to issue any certificate or

document showing wrong date of birth of the plaintiff is 13.2.1963. Present appeal is disposed of, so also pending application(s), if any.