

(2013) 02 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 4767 of 2012

Parveen Malik

APPELLANT

Vs

Central Board of Secondary Education (CBSE) and Others

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Citation : (2013) 4 SCT 255

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : R.S. Malik, for the Appellant; Harsh Aggarwal, Advocate for the Respondents No. 1 and 2 and Mr. Anil Dodd, Advocate for the Respondent No. 3, for the Respondent

Judgement

Rameshwar Singh Malik, J.—The present writ petition is directed against the impugned communication dated 25.1.2012 (Annexure P-10), passed by respondent - Board, thereby rejecting the request of the petitioner for carrying out the correction in his date of birth, on the basis of birth certificate (Annexure P-1), issued by the Sub-Registrar, Birth and Deaths, Sonapat. Facts first.

Petitioner, while studying in South Point Public School, Sonapat-respondent No. 3, passed his examination of 12th class. Respondent-school was duly recognised by and affiliated to Central Board of Secondary Education respondent No. 1 and respondent No. 2 is the regional office of respondent No. 1. The pleaded case of the petitioner is that his date of birth in the certificate, issued by respondent-board, was incorrectly recorded as 10.6.1993, whereas his correct date of birth, as per the birth certificate (Annexure P-1), issued by the Sub-Registrar, Births and Deaths, Sonapat, was correctly recorded as 10.6.1992. Petitioner got issued his birth certificate (Annexure P-1) from the office of Sub-Registrar, Births and Deaths, Sonapat, for the purpose of applying for the passport. From the certificate (Annexure P-1), petitioner came to know that his date of birth was incorrectly recorded in the school record as 10.6.1993 instead of 10.6.1992. Faced with this situation, petitioner applied to the respondent authorities for

correction of his date of birth, to be in accordance with the birth certificate (Annexure P-1). The Principal of respondent-school, vide his letter dated 12.1.2011 (Annexure P-3), forwarded all the relevant documents of the petitioner, available in the school record, to respondent No. 2, vide Annexures P-4 to P-8. Respondent No. 2, vide communication dated 24.5.2011 (Annexure P-2) sought certain information from the petitioner, including the birth certificate issued by the Municipal corporation or Registrar, Births and Deaths. In response to the communication (Annexure P-2), all the documents sought by respondent No. 2 were supplied. However, when no action was being taken by the respondent authorities, an application under Right to Information Act, 2005 was moved to respondent No. 2 on 24.10.2011, which was replied vide communication dated 11.11.2011 (Annexure P-9), informing the father of the petitioner, that the case of the petitioner has been forwarded to respondent No. 1, for approval of competent authority of the board. Thereafter, father of the petitioner was informed under the Right to Information Act, vide impugned communication dated 25.1.2012 (Annexure P-10), that the competent authority of the respondent-board has rejected the case of the petitioner, for correction in the date of birth, as it was not permissible as per rules of examination bye-laws of the Board.

2. Having been left with no other option, petitioner has approached this court by way of the present writ petition, invoking its writ jurisdiction under Article 226 of the Constitution of India. Notice of motion was issued and pursuant thereto, a joint written statement was filed by respondent No. 2, on behalf of respondents No. 1 and 2.

3. Learned counsel for the petitioner submits, that the birth certificate of the petitioner appended at Annexure P-1, has been issued by the competent authority. The document is coming from public record of birth and deaths, maintained by the Registrar, Births and Deaths, u/s 16 of the Registration of Births and Deaths Act, 1969. Its genuineness and authenticity can not be doubted, nor it has been, as a matter of fact, doubted by the respondent-board, while declining the genuine and reasonable request of the petitioner. He further submits that it is not the case set up by the respondents, that the respondent-board was not competent to carry out the correction sought by the petitioner in his date of birth. The only misconceived ground for rejection pointed out was, that it was not permissible as per rules of examination by-laws of the respondent-Board. Learned counsel for the petitioner next contended that, as a matter of fact, the impugned order was a non speaking and cryptic one, on the face of it. Authenticity or genuineness of the birth certificate Annexure P-1 has neither been considered nor discarded but altogether ignored illegally, as there is not even a passing reference thereof in the impugned communication. He submits that a combined reading of Rule 69.2 of the bye-laws would show that respondent-board was very much competent, to carry out the correction in the date of birth of the petitioner, it being only a genuine clerical error. Moreover, the petitioner was not going to gain anything out of it, as the petitioner was seeking

an increase in his age by one year, i.e. from 1992 to 1993, the date and month remaining the same. Learned counsel for the petitioner submits that the impugned communication was arbitrary on the face of it and was not sustainable in law. He prays for setting aside the impugned order, by allowing this writ petition. To substantiate his arguments, learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in R.K. Jangra Vs. State of Punjab and Others, . He also relies upon two judgments of this court in Resham Singh Vs. Union of India (UOI) and Another, and Shweta Sharma Vs. State of Haryana and Others,

4. Per contra, learned counsel for respondents No. 1 and 2 submits that the writ petition was not maintainable, as the disputed questions of fact were involved and evidence would be required to be lead by the parties. He next contended that, there was no provision for change in the date of birth, in the examination bye-laws of the respondent-Board. He places reliance on byelaws 69.2. He also places reliance on the relevant extract of list of communications including that of the petitioner appended at Annexure R-1/1, to contend that once the date of birth as 10.6.1993 was supplied by the parents of the petitioner, the petitioner was not entitled for seeking any correction thereof. He concluded by submitting that, since the writ petition was without any merit, it was liable to be dismissed. Learned counsel for respondent-board relies upon a judgment dated 30.5.2012, passed by this court in CWP No. 5397 of 2012 (Suyash v. Central Board of Secondary Education (CBSE), Panchkula and another).

5. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this court is of the considered opinion that, since the genuineness or authenticity of birth certificate (Annexure P-1) is not disputed by the respondent-board, the present petition deserves to be allowed. To say so, the reasons are more than one, which are being recorded hereinafter.

6. The question of law that falls for consideration of this court is, whether by-law 69.2 completely bars any change in the date of birth, in every given fact situation.

7. A combined reading of the pleadings of the parties would show that correctness, genuineness or authenticity of the birth certificate (Annexure P-1), has not been doubted by the respondent-board. The facts of the case are hardly in dispute. Specifically pleaded and undisputed case of the petitioner is that, when he was intending to apply for the passport, he got issued the birth certificate (Annexure P-1), from the office of Sub-Registrar, Births and Deaths, Sonapat. From the birth certificate (Annexure P-1), it came to the notice of the petitioner that his date of birth has been wrongly recorded in the school record, which in turn, came to be recorded as such in his detailed marks card of the 12th class, issued by the respondent-board.

8. It has neither been pleaded nor argued on behalf of the respondent-board,

that either the petitioner secured some benefit, by getting his date of birth recorded in the school record as 10.6.1993, at the time of initial admission or at any later point of time. It is also not the case pleaded by the respondent CWP board that petitioner was going to be benefited, if the correction sought in the date of birth is carried out. On the other hand, it prima facie seems that the petitioner will be loser at the end of his service career, in case he opts to join the government or semi-government service, because he would be reaching at the age of superannuation one year earlier.

9. Since the issue involved herein revolves around the scope and ambit of by-law 69.2 of the respondent-board, it would be appropriate to reproduce it and the same reads as under:-

Rule 69.2 Change/Correction in Date of Birth-

(i) No change in the date of birth once recorded in the Board's records in respect of those candidates who have appeared for the Secondary/Senior Secondary Examinations conducted by the Board shall be made. However, correction to correct typographical and other errors to make the certificate consistent with the school records can be made, provided that corrections in the school should not have been made after the submission of the application form for admission to examination of the Board.

(ii) Such correction in date of birth as candidate in case of genuine clerical errors will be made under orders of the chairman where it is established to the satisfaction of the Chairman that the wrong entry was made erroneously in the list of the candidates/application form of the candidate for the examination.

(iii) Request for correction in date of birth shall be forwarded by the Head of the School alongwith attested photostat copies of:

(a) application for admission of the candidate to the school.

(b) Portion of the page of admission and withdrawal register where entry in date of birth has been made alongwith attested copy of the Certificate issued by the Municipal Authority, if applicable, as proof of date of birth submitted at the time of seeking admission; and

(c) The School Leaving Certificate of the previous school submitted at the time of admission.

(iv) The application for correction in date of birth duly forwarded by the Head of School alongwith documents mentioned in bye-laws 69.2(iii) shall be entertained by the Board in respect of those candidates who have taken the examinations conducted by the Board only within two years of the date of declaration of result of class X/XII examination, as the case may be. In case of those candidates who have appeared for the examinations conducted by the Board both at Secondary and Senior Secondary levels, the period of two years shall be counted from the date of declaration of result of Secondary School Examination. No correction

whatsoever shall be made on application submitted after the said period of two year.

10. Again, it has neither been pleaded nor argued on behalf of the respondent-board that the relevant provisions of law, reproduced above, do not empower the respondent-board to carry out the correction, in the date of birth, sought by the petitioner. It has also not been so stated in the impugned communication dated 25.1.2012 (Annexure P-10). The impugned communication is also non speaking and cryptic on the face of it, which reads as under:-

Subject: Information under RTI Act, 2005.

Sir,

Kindly refer to H.Q. Letter No. CO-ORD/RTI/5127/2012-169-70 dated 9.1.2012 in respect of Sh. Om Parkash, H. No. 1565/31, Chotu Ram Colony, Gohana Road, Sonapat (Haryana) regarding correction in Date of Birth in respect of his son Master Parveen Malik, Roll No. 2153434-2009.

The competent Authority of the Board has rejected your case because Correction in Date of Birth on the basis of Date of Birth Certificate is not permissible as per rules of Examination Bye-laws of the Board. This is for your information.

Yours faithfully,

Sd/- (Public Information Officer),

RO, CBSE, Panchkula.

11. The actual order passed by the competent authority of the respondent-board has neither been supplied to the petitioner by respondent No. 2, nor it has been placed on the record alongwith the written statement. No reason is forthcoming in this regard. In view of the above, two material aspects of the case, which have gone undisputed on the record are;

(i) the respondent-board is competent to carry out the correction in the date of birth, as and when any genuine clerical error comes or brought to its notice, as it is clear from Rule 69.2(ii) reproduced above;

(ii) the correctness, genuineness and the authenticity of the birth certificate (Annexure P-1), issued by Sub-Registrar, Births and Deaths, Sonapat, has not been doubted by the respondent-board. Having said that, this court feels no hesitation to conclude that the respondent-board did not consider the issue in the right perspective, before passing the impugned order communicated to the petitioner, vide impugned communication dated 25.1.2012 (Annexure P-10). Thus, the impugned action of the respondent-board cannot be sustained.

12. During the course of arguments, learned counsel for the respondent-board could not substantiate his arguments, as to what was the disputed question of fact involved in the present case. Similarly, he could not doubt the genuineness and authenticity of the birth certificate (Annexure P-1), issued by the Sub-

Registrar, Births and Deaths, Sonapat and rightly so because the respondent-board has not raised any such doubt in its written statement. So far as the judgment dated 30.5.2012 in Suyash's case (supra) relied upon by learned counsel for the respondent is concerned, the same is not applicable to the facts of the present case for more than one reasons.

13. Firstly, no such birth certificate as Annexure P-1 in the present case, was an issue for consideration before the court in Suyash's case (supra). Secondly, it was observed that candidate took advantage of the date of birth at the time of admission in the school and thereafter it was observed that the petitioner therein was intending to take benefit of the changed date of birth in his current academic pursuits. In the present case, it is not even the allegation of the respondent-board. Further, it seems that the judgment of the Hon''ble Supreme Court in R.K. Jangra's case (supra) as well as of this court in Resham Singh's case (supra) and Shweta Sharma's case (supra) were not brought to the notice of the court.

14. It is the settled proposition of law that peculiar facts and circumstances of each case are to be seen, considered and appreciated first before applying any codified or judgment law thereto. It is so said because difference of one additional or different fact can make the world of differences, as observed by the Hon''ble Supreme Court of India in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, The observations made the Hon''ble Supreme Court, which can be gainfully followed in the present case, read as under:-

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered the judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington V. British Railways Board*, 1972 (2) WLR 537. Circumstantial flexibility, one additional or different fact may make world of difference between conclusions in two cases.

15. Once the respondent-board has the power and competence to carry out the change/correction in the date of birth, as envisaged under Rule 69.2, coupled with the material fact that the authenticity and genuineness of the birth certificate (Annexure P-1) is not doubted, the plea raised by the respondent-board does not stand the test of judicial scrutiny. No other reason is forthcoming either in the impugned communication (Annexure P-10) or in the written statement, filed by the respondent-board nor any such reason has been put into service by the learned counsel for the respondent-board, during the course of arguments.

16. In somewhat similar situation, the Hon''ble Supreme Court in R.K. Jangra's case (supra) directed the competent authority to consider the case on the basis of documents and material produced before it, inspite of the fact that this court, vide its order dated 29.1.2007, relegated him to the ordinary remedy before the

civil court. Thus, in view of the judgment of the Hon''ble Supreme Court in R.K. Jangra's case (supra), the plea raised by the respondent-board relying on Suyash's case (supra) is without any force and liable to be rejected.

17. Similarly, a Division Bench of this court in Resham Singh's case (supra), while relying upon the judgment of Bombay High Court in Jigar Harish Shah Vs. Union of India and Others, and also the judgment of High Court of Gujarat in Kokilaben Panchal Vs. Regional Passport Officer, , allowed the writ petition directing the competent authority to consider the application for correction in the date of birth. After detailed deliberation on the issue of authenticity of birth certificate, issued by the Registrar, Births and Deaths, the Division Bench in Resham Singh's case (supra) made the following observations, which aptly apply in the present case:

12. The aforementioned judgments, with which we are in respectful agreement, have correctly and succinctly delineated the powers and the jurisdiction of a Passport authority, considering an application for alternation of date of birth, based upon two contradictory documents i.e. birth certificate issued by the Registrar of Births and Deaths and a certificate issued by an education authority.

13. A birth certificate is issued by a Registrar of Births and Deaths and reflects an entry extracted from the register maintained by the Registrar under the Registration of Births and Deaths Act, 1969. The aforementioned statute was enacted to provide for and regulate registration of Births and Deaths and for matters connected therewith. Section 7 thereof, requires a State government to appoint a Registrar for each area comprising the area within the jurisdiction of a municipality/panchayat or the local authority or any other area or a combination of any two or more of them. Section 16 of the Act requires every Registrar to keep in the prescribed form a register of Births and Deaths for the registration of births and deaths in his area or any part thereof in relation to which, he exercises jurisdiction. A register of Births and Deaths is, thus, a public record of births and deaths that occur within the area assigned to a Registrar. The Register being a public record, presumption of truth attaches thereto and consequently to the birth certificate, reflecting an extract from the Births and Deaths register. A matriculation certificate, on the other hand, is primary evidence of the marks obtained by a candidate in a qualifying examination and the date of birth recorded as an ancillary measure. Primacy would, therefore, have to be accorded to the date of birth reflected in the birth certificate issued by the Registrar of Births and Deaths.

18. Again, in the identical fact situation as in the present case, Rule 69.2 came for interpretation before this court in the case of Pervinder Kumar Vs. Secretary, Central Board of Secondary Education and Others, wherein in paras 14 and 15 of the judgment, this court made the following observations:

14. In the case of Karam Singh v. State of Punjab and another (supra) relied

upon by the counsel for the appellant, this Court has relied upon three decisions, namely, *Jiwan Dass Vs. State of Haryana and Another*, *Hari Parshad Handa Vs. The State of Punjab and Another*, and *The State of Haryana and others Vs. Chander Singh alias Chander Bhan*. In the case of *Jiwan Doss v. State of Haryana* (supra), it was held that even if the period of two years or extended period of six months are not available and there is no remedy left under the administrative law after the stipulated period has expired, legal remedy under the civil law will still be available, because administrative law cannot, in fact, bar the jurisdiction of civil courts. It was further held that even the decisions of administrative authorities allowing or rejecting those requests for alternation in date of birth which may have been made within the stipulated period, too are open to judicial scrutiny when challenged before a Court of competent jurisdiction. It was thus held in the case of *Jiwan Doss v. State of Haryana and another* (supra) that even if a remedy as per the administrative law/rules had become barred by limitation, a legal remedy is available to the aggrieved person under the civil law before a civil court.

15. In the case of *Hari Parshad Handa v. The State of Punjab* (supra), the Court had held that if there is no allegation of fraud or misrepresentation, the prayer for correction in date of birth should not be declined. In the present case, no fraud or misrepresentation has been projected by the defendant nor anything has been proved against the plaintiff rather the court has held that the date of birth has been wrongly recorded but because of the hindrance of Rule 69.2 of the Examination Bye-law, the suit has been dismissed. In my view, in such like cases as the one in hand, the respondent authority should not be insensitive to such situations, where persons like plaintiff who has lost his father in 1983 and the mother has remained unmarried, thereafter, should be declared to have been born in 1985 due to mistake apparent on the face of record. Since, the defendants have not brought on record anything to impute motive to the plaintiff for correction in the date of birth other than the aforesaid and has also not proved any fraud or misrepresentation, the law cited by the counsel for the appellant in the case of *Karam Singh v. State of Punjab* (supra) is fully applicable to the effect that even if remedy as per law or rules has become barred by limitation, the legal remedy available to the plaintiff under the Civil Law before the Civil Court should have been granted by the Courts below. The judgments relied upon by the Courts below in the case of *State of Haryana and Others Vs. Sumitra Devi and Others*, and *Board of Secondary Education of Assam Vs. Md. Sarifuz Zaman and Others*, are on there on facts and such is not the question here because in this case both the courts have found as a matter of fact that the entry of date of birth is wrongly recorded and if the same is allowed to be maintained there, it is socially stigmatic.

19. Similar law was laid down by this court in *Karam Singh Vs. State of Punjab and Another*, and also by the Delhi High Court in *Rajesh Kumar Jain Vs. The Secretary, CBSE and others*, The relevant observations made by his Lordship in *Rajesh Kumar Jain*'s case, read as under:-

10. In the present case the petitioner was stated to be born on 13th April, 1967 by School Authorities which was recorded in error and subsequently the same was shown as 18th March, 1967 whereas it is contended that it is required to be corrected to 13th August, 1967. The school itself has corrected the same by holding that it was a typographical error. The Hospital record as well as the statutory record as maintained by the Municipal Corporation of Delhi also show the petitioner to be born on 13th August, 1967. The entry at Serial No. 620 of the Municipal Register which is a public document obviously was made on 14th August, 1967 and cannot, in any manner, be held to be wrong. There are entries before this entry as well as after the entry and maintaining of the Register is a continuous process. The original record has been produced in court which reiterates the averments of the petitioner.

11. In view of the above reasons it is established that the respondents are required to act under Bye-law 69.2 of the Examination Bye-laws as it will only amount to removing of typographical error which is permissible.

12. The present petition is, accordingly, allowed. Rule is made absolute and a writ of mandamus is issued to the respondent to issue a revised certificate to the petitioner indicating the date of birth as 13th August, 1967 instead of 18th March, 1967. There will be no order as to costs.

20. Respectfully following the law laid down by the Hon''ble Supreme Court in R.K. Jangra's case (*supra*) and the judgments of Bombay, Gujarat, Delhi High Courts as well as of this court, referred to herein above, it is unhesitatingly held that when the genuineness and authenticity of the certificate (Annexure P-1), issued by the Sub-Registrar of Births and Deaths is not doubted by the competent authority of respondent-board and it has also the power to carry out the change/correction in the date of birth recorded in the school certificate, the impugned communication (Annexure P-10) is illegal on the face of it.

21. No other argument was raised. Considering the peculiar facts and circumstances of the present case, coupled with the reasons aforementioned and the enunciation of law, as discussed herein above, this court is of the considered view that, respondent-board has erred in law, while refusing to entertain the request of the petitioner for correction of his date of birth. Consequently, impugned communication dated 25.1.2012 (Annexure P-10), is hereby set aside. Respondent-board is directed to consider the application of the petitioner for correction of his date of birth, in accordance with 1a and the observations made hereinbefore, within a period of two months from the date of receipt of a copy of this order.

Resultantly, the instant writ petition is allowed, however, no order as to costs.