
(2000) 08 GAU CK 0008
In the Gauhati High Court
Case No : Writ Appeal No. 343 of 2000

Sarifuz Zaman

APPELLANT

Vs

Board of Secondary Education and Others

RESPONDENT

Date of Decision : 30-08-2000

Acts Referred:

Assam Secondary Education Act, 1961 — Section 22, 24, 24(1), 24(2)

Citation : (2001) 1 GLT 94

Hon'ble Judges : Brijesh Kumar, C.J; D.N. Chowdhury, J

Bench : Division Bench

Advocate : U. Bhuyan and S.D. Bhuyan, for the Appellant; T.C. Chutia, for the Respondent

Final Decision : Allowed

Judgement

Brijesh Kumar, C.J.—This appeal is preferred against the order dated 7.8.2000 passed by the learned Single Judge in Writ Petition (C) No. 3368 of 2000. We have heard Sri U. Bhuyan, learned Counsel for the Appellant and Mr. T. Chutia, learned Counsel appearing for the Board of Secondary Education, Assam, the State counsel represents the Respondents No. 2 and 3. Since the question involves is short one it is proposed to dispose of the Appeal finally at this stage itself as no useful purpose would be served keeping the matter pending unnecessarily.

2. The case of the Petitioner/Appellant is that he passed Matriculation Examination from the Diphu Government Boys' Higher Secondary School in the year 1991 conducted by the Board of Secondary Education, Assam. Thereafter he passed Higher Secondary Examination as well as B.Sc. Examination in the year 1998 and presently has been undergoing computer course. The case of the Petitioner/Appellant further is that his actual date of birth is 16.8.1975 which is so mentioned in all the records of the schools and colleges but due to mistake of the Diphu Boys' Higher Secondary School the date of birth was wrongly mentioned as May 30, 1974. The mistaken date of birth as forwarded by the

school crept into the admit card. The writ Petitioner/Appellant did not realise the importance of the same, therefore took no steps for correction of his date of birth from 30.5.1974 to 16.8.1975 until he could understand its implication. He applied for correction of his age through the proper channel namely Principal, In-Charge of Diphu Government Boy's Higher Secondary School. Copy of the application dated 12th October, 1999 has been filed as Annexure-C along with the memo of appeal. The Principal in turn forwarded the application to the Secretary, Board of Secondary Education, Assam. It has been indicated in the letter written by the Principal that the age of the Petitioner/Appellant is/was recorded as 16.8.1975 in the School record and in the admission register. It was by mistake that while filling up the form of HSLC Examination his age was wrongly recorded as May 30, 1974. In the letter he wrote that it is a clerical mistake and it may be corrected. The Inspector of Schools also wrote to the Secretary of the Board of Secondary Education, Assam for correction of the age of the Appellant. For the Petitioner/Appellant it is submitted that requisite fee etc. was deposited but no order has been passed by the Board on the application, hence he approached this Court by filing the writ petition which has been dismissed without indicating any reason only observing that there was no merit in the petition.

3. Learned Counsel appearing for the Respondents/Board namely Sri T.C. Chutia submits that under the regulation framed by the Board for conducting the Board's examination, it is provided under Regulation 8 that no application for correction of age is to be entertained after three years of issue of the certificate by the Board. Therefore, there is no occasion for the Board to consider the application for correction of his age, since the examination was held in the year 1991 and the application was moved in the year 1999.

4. A perusal of the regulations indicates that it has been framed u/s 24(1) of the Act. Section 24 of the Assam Secondary Education Act, 1961 provides that the Board may make regulations for the purpose of carrying out of the provision of the Act. Clause (a) to (m) of Sub-section (2) of Section 24 of the Act are quoted below:

- (a) the constitution, powers and duties of Committees appointed u/s 22.
- (b) courses of study to be laid down for different examinations.
- (c) marks required for passing in any subject and the examination as a whole, and for credit and distinction in any subject,
- (d) qualification, appointment and remuneration of examiners, paper-setters and Ors. s,
- (e) conducting examinations and publishing the results,
- (f) Conditions of recognition of High Schools and High Madrassas/Higher Secondary Schools,

- (g) conditions under which candidates shall be admitted to the examinations of the Board,
- (h) disciplinary measures for malpractices in examinations,
- (i) fixing of fees and charges in respect of examinations,
- (j) provident fund, etc., for the benefit of the employees of the Board,
- (k) rate of travelling and daily allowances to the non-official members of the Board of Committees,
- (l) delegation of powers of assignment of functions to Committees formed under this Act.
- (m) all members which by this Act, are to be or may be provided for by regulations:

....

Needless to mention that none of the clauses of Sub-section (2) of Section 24 of this Act is relating to correction of age in certificate and original documents issued by the Board. As indicated earlier Sub-section (1) of Section 24 relates to making of regulations for the purpose of carrying out the provisions of this Act. It is thus clear that the scope of the Regulation only would be limited to facilitate the working and functioning of the Board for the purpose of carrying out of the provisions of the Act. It is submitted by the learned Counsel for the Appellant that limitation could not be fixed under the regulation for the purpose of making any application for correction of age as there is no provisions in the Act providing for such a provision. The regulations, it is submitted could not deprive the applicant of applying for correction of date of birth, by providing period of limitation for making application. It is not kind of relief that by passage of time any right would accrue or vest in favour of any Ors. person or may extinguish right of the applicant or any Ors. person. Any such provision, which will shun an applicant to get correction of date of birth could not be provided except in the statute itself. Any provision made in the regulation for the purpose of carrying out the provision of the statute, cannot confer or extinguish any right generally available to a person to get a mistake corrected. No regulatory measure can, in any case, be absolute in nature. In present case, we find that the report of the Principal of the school is that in the Admission Register and the College records his date of birth was recorded as 16.8.1975. It is also indicated that by clerical mistake that in the form sent to the College his age was indicated as 30 May, 1974. The application is forwarded to the Board by the Principal through the Inspector of Schools as provided under the Regulation. In such circumstances, the Secretary of the Board of Secondary Education cannot reject the application mainly on the ground that the application has been given after three years. As a young boy being a student one may not realise the importance of correct date of birth. Such a realisation may come a little later on gaining some maturity. In the present case he is still pursuing computer course after doing his B.Sc. We,

therefore, allow the appeal and set aside the order passed by the learned Single Judge with the direction to the Respondent No. 1 to consider the application of the Appellant and examine the same on merit and pass any appropriate order, as he may think fit and proper, in the facts and circumstances of the case. It will be open to the authority concerned to verify the correctness of the case of the applicant for correction of age and such authority would not be influenced by any observations made in this order.

Costs easy.