

(2010) 11 PAT CK 0003
In the Patna High Court
Case No : CWJC No. 5302 of 2006

Sarita Kumari

APPELLANT

Vs

Respondent: The State of Bihar and Others

RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

Citation : (2011) 3 PLJR 946

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard the parties.

2. The Petitioner had appeared in matriculation examination conducted by the Bihar School Examination Board, Patna, which examination was held in April, 1990. For this examination, the Petitioner had registered with the Board in the year 1989, which registration number is 0511056/8067 of 1989. In the said registration certificate, her date of birth is shown as 26.12.1977 (Annexure-2). On basis of the aforesaid registration, she was permitted to take examination and issued admit card by the Board, which is Annexure-3 to the writ petition, which also shows her date of birth as 26.12.1977 alongwith her registration number.

3. Having appeared in the examination, she was declared passed in 1st division and in July, 1990, she was issued provisional certificate of passing, which also recorded her date of birth as 26.12.1977 (Annexure-4). In the year 2005, when she went to take the original mark sheet and the final certificate, the same was given to her in which also the date of birth was recorded as 26.12.1977 but it appeared to be later corrected by hand- writing making it 1st of March, 1976. By this time, the Petitioner had joined the College. She has thus filed this writ petition immediately thereafter in the year 2006 challenging the stand taken by the Board to change her date of birth. The Board without notice to the Petitioner

has chosen to change the date of birth of the Petitioner from 25.12.1977 to 1st March, 1976 and that too long after the Petitioner had passed matriculation certificate.

4. A counter affidavit has been filed on behalf of the Board in which it is stated that on 23rd August, 1989, the Board had taken a decision not to permit any student, who was less than 14 years of age in taking matriculation examination. The said decision had given liberty to the students to get their date of birth corrected or wait for their age to be 14 years for appearing in matriculation examination. It is further stated in the counter affidavit that as the Petitioner did not take steps to get her date of birth corrected, in realizing that the Petitioner was less than 14 years of age, when she took the matriculation examination, the Board corrected her date of birth as 1.3.1976, which would make her 14 years when she appeared in the examination. In support of their right to do so, reliance has been placed on two orders of this Court, which are annexed as Annexures-B and Annexure-C to the counter affidavit. Annexure-B is an order of this Court in the case of Anuragh Narayan v. The Bihar School Examination Board being C.W.J.C. No. 11880 of 2000, disposed of on 23.11.2000 and Annexure-C is a Division Bench order in L.P.A. No. 21 of 2005 (The Chairman, Bihar School Examination Board v. Ismat Zahra and Others), disposed of on 12.1.2005. In the first case i.e. Anuragh Narayan (supra), it was a case where a student had been stopped from appearing in the examination in the year 2000 itself on basis of the decision of the Board dated 23rd August, 1989. This Court refused to interfere and rightly so. That case does not apply at all to the present case because in that case the action was taken before the examination and as the student was found under-age, he was restrained from taking the examination. That is not the case in the present. Here long after examinations were taken, the result published, step to change the date of birth by the Board itself is being taken. Then is a case of Ismat Zahra (supra). There the Division Bench without deciding law or the right of the parties, merely cleared a confusion and held that the confusion should be resolved by adopting the date of birth as correct by the Board to be taken for all purposes. Thus that is not a decision or the authority on the point and is clearly distinguishable. Apart from this, the said Division Bench judgment in the case of Ismat Zahra (supra) has been considered by the Division Bench of this Court in the case of Dhananjay Prasad v. Bihar School Examination Board since reported in 2008 (2) PUR 209. The Division Bench has affirmed the judgment of Single Judge in the case of Md. Kalam & Ors. v. State of Bihar & Ors. being C.W.J.C. No. 7302 of 1996, judgment dated 23.4.1997 and then considered the judgment of Division Bench in the case of Ismat Zahra and held " in para 8 as follows:-

The Board has taken a policy decision not to permit a student to appear in the Secondary School Examination unless he had attained the age of 14 years on 1st March of the year in which the examination is to be held. Such a policy decision can be taken by the Board. However, in the present case undisputedly the Petitioner was below 14 years of age on 1st March, 1990 when he appeared in

the Secondary School Examination of the year 1990. Thus, he was not eligible for appearing in the Secondary School Examination and the Board could have prohibited him from appearing in the examination. However, in our opinion, when the Petitioner was allowed to appear in the examination, his date of birth cannot be changed at the instance of the Board. To that extent the decision of the Board to change his date of birth is absolutely illegal.

5. Thus, in my view, though the Board could have stopped the Petitioner from appearing in the examination having full knowledge of the fact and having permitted the Petitioner to appear in the examination, now it cannot change the date of birth of the Petitioner. Date of birth is a historical event and not something that can be arbitrarily fixed. The Division Bench in the case of Dhananjay Prasad (*supra*) has considered the earlier judgment of the Division Bench and held under almost identical fact that the change of date of birth by the Board was illegal. In that view of the matter I am left with no option but to order accordingly.

6. I, therefore, order that the date of birth as changed by the Board to 1.3.1976 is held to be illegal and is quashed accordingly. The date of birth of the Petitioner as 26.12.1977 is accordingly restored and held to be the Petitioner's correct date of birth.

7. With the aforesaid observations and directions, the writ petition is allowed.