

(2006) 01 AHC CK 0117
In the Allahabad High Court
Case No : Special Appeal No. 141 of 2005

Secretary, Board of High School and Intermediate Education	APPELLANT
Vs	
Ram Jatan	RESPONDENT

Date of Decision : 05-01-2006

Acts Referred:

Citation : (2006) 5 AWC 4827 : (2006) 2 UPLBEC 1819

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Advocate : S.C, for the Appellant; Kamlesh Kumar and S.D. Shukla, for the Respondent

Final Decision : Allowed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—This special appeal is preferred against the order of Hon"ble single Judge of this Court dated 6.4.1999 whereby the writ petition of the petitioner respondents was disposed of with the direction to the Board to issue a fresh and corrected certificate changing the date of birth of the respondent as 12.7.1949 instead of 1.7.1952 within a period of two months from the date of receipt of the certified copy of this order.

2. The brief facts are that the petitioner respondent appeared in the High School examination in the year 1967 mentioning his date of birth as 1st July, 1952 in the examination form filled by him. He passed High School Examination, 1967 and the certificate issued by the appellant mentioned his date of birth as 1.7.1952 on the basis of entry made by him in his examination form. Thereafter the petitioner respondent applied for appointment as constable in C.R.P.F. in the year 1969 showing there in his date of birth as 12.7.1949. The petitioner respondent was selected and appointed. However, the C.R.P.F. asked the petitioner respondent to furnish High School certificate for verification of his date of birth as disclosed by him at the time of getting appointment which he failed to (sic). The officials of C.R.P.F. made verification from the Board. It was found that his actual date of birth was 1st July, 1952 as printed in the High School

certificate Consequently an enquiry was initiated against him since as per date of birth 1.7.1952, he was under age for recruitment in C.R.P.F. However, the respondent in the meanwhile applied in 1995 for correction of his date of birth in the High School certificate. When the said application was not being entertained, he approached this court by Writ petition No. 36718 of 1997 which was disposed of vide order dated 5.11.1997 with the direction to the Board to decide his application in accordance with law within a period of two months from the date of production of the certified copy of the order. The Secretary of the Board thereafter disposed of the representation by a reasoned order dated 12.1.1998 rejecting the same on the ground that even the Principal of the institution after verifying has endorsed that as per record of his school, the date of birth is 1.7.1952. The petitioner respondent being aggrieved filed writ petition No. 10093 of 1998 for quashing of the order of Secretary dated 12.1.1998 and also seeking a mandamus commanding the (Board) to correct his date of birth in the High School certificate issued in the year 1967. The Hon'ble Single judge was of the view that the change in the date of birth sought by the petitioner is of no advantage to the petitioner respondent. Rather on the other hand he will be in a disadvantage position in the sense that he would be required to retire three years earlier to his otherwise date of retirement based on 1.7.1952. The writ petition was therefore, on the aforesaid ground, allowed and the Board was directed to correct the date of birth of the petitioner respondent in the High School certificate and issue correct certificate within a period of two months.

3. Learned counsel for the appellant vehemently contended that after receipt of the representation of the respondent, pursuant to the direction of this court in writ petition No. 36718 of 1997, the matter was examined and the certificate of the petitioner respondent was also sent to the concerned school whereupon it found that the date of birth entered in the certificate is correct and no change is required. He further submitted on behalf of the appellant that the correction in the High School certificate can only be made where any clerical mistake or omission is found at the Board level. It is submitted that since in the case in hand no error was found, rather the entry in the High School certificate was on the basis of entry made in Examination form submitted by the appellant, the same was considered, examined and rejected by a reasoned order. It is also submitted that the disciplinary proceeding against the appellant was initiated by C.R.P.F. wherein the charges against the petitioner respondent was regarding furnishing incorrect date of birth due to which he secured appointment otherwise he was not eligible on the date when he applied for such appointment being under age and the belated exercise on the part of the respondent is only to wriggle out of the said proceedings by getting the date of birth changed in High School certificate and this is not bonafide.

4. Learned counsel for the respondent contended that the High School certificate was not immediately given to the petitioner respondent and it was only given in the year 1995. When he got the certificate, it was found that the date of birth had not correctly been recorded and thus applied for correction of the same. It is

submitted that there were no laches on the part of the petitioner respondent.

5. Having considered the rival submissions advanced on behalf of the parties, we find, that under the regulations clerical error, if any, occurred on account of mistake of the Board Office, can only be rectified. Obviously Regulation 7 Chapter III as stood in the year 1967 did not prescribed any period during which such error could have been corrected but it could not be presumed that correction can be permitted to be made even after several decades. It is inconceivable that the appellant which conducts, examination of High School and Intermediate at such a massive level would be able to keep all the examination forms and other records of all the candidates without any limitation of period. Therefore, at the best, if any correction is required it could have been allowed to be rectified within a reasonable time. Moreover such correction would be permissible only when it has occurred due to the mistake of the Board Office and not otherwise. The appellants have categorically pleaded that the date of birth has been recorded in the certificate on the basis of entry made by the petitioner respondents in his examination form which was duly verified and certified by the Principal of the college where the petitioner respondent was studying on the basis of the records maintained in the college. It is also inconceivable that a student who has passed High School in 1967 did not collect his High School certificate for more than 28 years. Although the petitioner respondent has tried to blame the Board for the alleged mistake but in the facts and circumstances of the-case, we are not able to persuade ourselves to agree with the submissions made by the petitioner respondents. In our view, the date of birth recorded in the High School certificate of the appellant is not to be changed lightly unless and until there are cogent and substantive material showing that the date of birth has been wrongly mentioned in the certificate due to the fault of the office of the Board and not otherwise and it is sought to be rectified within a reasonable time and not after decades. There is another aspect in favour of the appellant.

6. We also find that Regulation 7, Chapter III was amended in the year 1983 as hereunder:

[7. Secretary, on behalf of the Board shall give a certificate of passing the examination on prescribed pro forma to successful candidates and later on correct the entries therein, if any, provided that any such wrong entry in the certificate has appeared due to any clerical mistake or omission which occurred due to carelessness in the records of the Board or in the records of institution wherefrom the last education has been received.

This correction may be made by Secretary only when the candidate within two years from the date of issuance of concerned certificate by the Board, has submitted an application for the rectification of mistake to the Principal/Centre Manager concerned attracting his notice regarding clerical mistake and one of its copy has also been sent to the Secretary through registered post].

7. The said amended provision clearly prescribe that the correction of certificate of the Board is permissible only within two years from the date of issuance of such certificate if there is mistake or omission occurred due to carelessness in the record of the Board for in the record of the institution.

8. The learned Counsel for the petitioner respondents submits that the aforesaid amendment came in 1983 and therefore, will not apply to his case since the petitioner respondents passed High School examination in 1967. We do not agree with the aforesaid submission for the reason that the petitioner respondents sought correction of date of birth in the records of the appellant respondent in the year 1995, i.e. after 12 years from the date the Regulation 7 Chapter III was already amended. Thus even if the period of two years if not counted from 1967 yet, the respondent at the best could have applied with in two years from 1983 i.e. upto 1985.

9. Therefore, in the entirety of the circumstances, in our view the appellant is correct in submitting that the application of the petitioner respondents could not be entertained in view of the provisions contained in Regulation 7 Chapter III of the Regulation. We also notice that the Hon"ble Single Judge has not at all considered the aforesaid regulation in the judgment under appeal and has decided merely on the ground that since the petitioner respondent is seeking change of date of birth in the High School certificate, it would be against his interest and only on that basis writ petition has been decided directing the appellant (Board) to make necessary correction in the certificate of the petitioner respondent. In our view, the Hon"ble Single Judge has erred in law in issuing such mandamus to the appellant and therefore, the judgment under appeal is liable to be set aside.

10. In the result, the special appeal succeeds and is allowed. The judgment under appeal is set aside. Accordingly the writ petition is also dismissed. No order as to costs.