

(2012) 05 AHC CK 0194

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 46446 of 2007

Sunny Kumar

APPELLANT

Vs

Secretary, Central Board of Secondary Education and Another

RESPONDENT

Date of Decision : 09-05-2012

Acts Referred:

Citation : (2012) 05 AHC CK 0194

Hon'ble Judges : Amreshwar Pratap Sahi, J

Final Decision : Partly Allowed

Judgement

Amreshwar Pratap Sahi, J.

Heard Sri Ashis Jaiswal along with Randhir Jain for the petitioner. Sri H. N. Pandey for respondent nos. 1 and 3 and Sri M. K. Mishra for respondent no. 2.

Parties have exchanged affidavits and Sri H. N. Pandey for the Board and Sri M. K. Mishra for the Principal, Air Force Senior Secondary School, Bareilly, have produced the original documents in their custody in relation to the present writ petition.

The petitioner has come up before this Court praying for quashing of the order dated 1.6.2007, passed by the respondent Board refusing to correct the date of birth of the petitioner as 22nd December, 1988 on the ground that the documents which are required to be considered for the said correction in accordance with the examination Bye Laws indicate that there has been cutting and overwriting in the admission form, in the list of candidates, in the admission and withdrawal register maintained by the school and it has also been demonstrated before this Court with the help of certain documents that this manipulation has been further transcribed in the transfer certificate issued by the respondents school as also the documents relating thereto.

The petition was entertained and the parties were directed to produce the record and other documents. The Court after perusing the same made enquiries and the

entire records have been produced before the Court.

The petitioner's contention is that his date of birth is 22nd December, 1988 as per the school records which was incorrectly transcribed in the list of candidates as a result whereof the discrepancy occurred in the date of birth as reflected by the respondent which is wrongly shown as 22nd February, 1980 or 22nd February, 1988.

The petitioner after having appeared in his Secondary examinations applied for correction of his date of birth asserting that it is 22nd December, 1988. The Board made an inquiry from the Principal respondent no. 2 and called for certain documents, therefore, which have been brought on record through the counteraffidavit. The Principal tendered his explanation whereafter the Board examined the matter and notings were prepared by the concerned dealing assistant indicating the errors in the date of birth as reflected in the various documents on record. This inquiry was made on the basis of the information received from the Principal of the institution and the conclusion drawn was that due to cuttings and overwritings in the documents that were produced, the case of the petitioner falls within the category of a doubtful matter and, therefore, the correction was regretted.

Learned counsel for the petitioner contends that the correct date of birth is 22nd December, 1988 and it is not 22nd February, 1980 or 1988. It is urged that the documents were produced by the petitioner and the admission form, which was filled up by the parents of the petitioner, indicated the date of birth as 22nd December, 1988. The error, according to the petitioner, occurred in the records of the Principal of the institution which were sent at the time of examination forwarded to the Board at different stages. This discrepancy, therefore, is in those documents and there is no manipulation or error on the part of the petitioner.

Sir H. N. Pandey, on the other hand, contends that the information received from the Principal of the institution was examined and after having noticed these various discrepancies the Board did not find it appropriate to correct the date of birth and accordingly sent a letter of regret. Sri Pandey further submitted that if the petitioner is aggrieved he can seek a relief of declaration before a competent court for the purpose of any such correction. The decision of the authority not to carry out the correction as prayed for cannot be said to be perverse and is based on the material on record.

Sri Mishra for the Principal stated that the date of birth maintained in the record of the school is 22nd December, 1988 and there is no cutting or overwriting in the record of the petitioner. In the aforesaid circumstances, respondent no.2 Principal has supported the cause of the petitioner.

Sri Mishra further submitted that the error in the list of candidates was not deliberate and since the same was a human error therefore the same deserves to be corrected.

Replying to the aforesaid submission Sri H. N. Pandey for the Board submits that the notings of the files clearly indicate that the admission form has been manipulated inasmuch as the digit 1 has been added before the digit 2 so as to reflect the month of birth as December. Sri Pandey further submits that the error in the list of candidates is admitted by the Principal and according to the Board the year of birth in the list of candidates is 1980 which has been converted into 1988. He further submits that this stands verified by description in words which indicates the year of birth as 1980 (Nineteen Eighty).

The third submission is that the admission and withdrawal register which has been brought in original before the Court would also indicate an error in the month reflected and the digit 1 has been introduced before the digit 2. Apart from this, Sri Pandey from the records has invited the attention of the Court to the registration card of Class IX of the petitioner to urge that the date of birth mentioned in the said card is 22nd February, 1988. He further submits that the month of February which has been converted to "December", had been manipulated after the issuance of the said registration card by the school.

He further submits that when the inquiry proceeded the Principal of the institution has forwarded two photostat copies of the transfer certificates that were issued to the petitioner, one of which stands recorded in book no.1 transfer certificate no. 50. According to Sri Pandey this transfer certificate mentions the date of birth as 22nd December, 1988. The petitioner had applied for the issuance of a copy on 13.6.2005 that was issued by the Principal on 14.6.2005.

The second certificate is of book no. 2 bearing Certificate No. 138. The said certificate is said to have been applied on 13.6.2005 but the date of its issuance has not been mentioned in the said certificate. In this certificate the date of birth in digits has been recorded as 22.12.1988 and in words it has been mentioned as 22nd February, 1988 but the word "February" has been scored out and substituted by the word "December".

Sri Pandey further invited the attention of the Court to another document, namely, the certificate that had been produced before the Principal at the time of the admission of the petitioner in the Air Force School. This transfer certificate is of S.M. Khan Public School, Bareilly. According to Sri Pandey, this is a duplicate second copy which was obtained during the course of inquiry and has been issued on 10.3.2006. Neither the Principal of the school nor the petitioner have produced the original certificate which should have been maintained by the school in its original record. According to Sri Pandey this second certificate appears to be manipulated as the date of birth has been mentioned as 22.12.1988 where also the digit 1 appears to have been added against the digit 2.

It is in the aforesaid background that the learned counsel for the petitioner contends that none of these errors in any way demonstrate or establish that the petitioner was born in 1980 and even otherwise there is no inquiry or proof to

indicate that the petitioner was responsible for any such discrepancy, error or manipulation. He submits that the allegation of cutting and overwriting as contained in the impugned order is, therefore, unfounded and based on surmises and conjectures.

Having heard learned counsel for the parties and having perused the record so far as the year of birth of the petitioner is concerned all documents either produced by the petitioner or by the respondentBoard or by the Principal clearly indicate that his year of birth is 1988 except for the list of candidates where the error in the year of birth as 1980 has been indicated and admitted by the Principal. Learned counsel for the respondentBoard has relied on the registration certificate of Class IX. There also the year of the birth of the petitioner is recorded as 1988. There does not appear to be any cutting or overwriting in the year of birth in the records which have been produced before the Court and this also does not appear to be the finding as contained in the notings as produced by Sri Pandey.

In such circumstances, there is no doubt that the year of birth of the petitioner is 1988 and the same has to be recorded accordingly. The Board, therefore will now proceed as directed hereinafter on the premise that the year of birth of the petitioner is 1988 and not 1980.

Coming to the next contention of the dispute as to whether the petitioner was born in February or December 1988, to the mind of the Court the additional documents which have been placed by the Board before the Court, during the hearing do not appear to have been scrutinized either by the officials of the Board or by the authority before passing of the impugned order as these documents neither find mention therein nor does the conclusion drawn by the respondentBoard indicate any reasons being given for arriving at the aforesaid conclusion on the basis of such documents. The recital contained in the impugned communication is only that there is a cutting and overwriting in the admission form and other documents stated therein.

In my opinion, this conclusion drawn is not in conformity with the evidence on which reliance has been placed by the Board. Not only this the documents which are being relied on record and by the Principal of the institution should have been brought to the notice of the parties before recording a finding with regard to the month of birth. There does not appear to be any indication in the order about the month of birth of the petitioner as contained in the registration certificate of Class IX. In such circumstances, in my opinion, this limited inquiry deserves to be undertaken by the Board to find out the correct month of birth of the petitioner on the basis of documents on record in accordance with the byelaws of the Board that are required to be invoked for the purpose of carrying out such correction.

Accordingly, the impugned order dated 1.6.2007 in so far as it regrets the correction to be carried out is set aside. In the light of the aforesaid, the

respondentBoard shall now conduct an inquiry after giving an opportunity to the petitioner and after calling for an explanation from the Principal of the institution, only in relation to the month of birth of the petitioner, and then pass an order for maintaining the correct date of birth of the petitioner. This exercise shall be undertaken and completed latest within three months from today. The petitioner and the respondent no. 2 shall cooperate in the inquiry.

The writ petition is partly allowed to the aforesaid extent.