

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th March, 2011

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W.P.(C) 8546/2008

% **MUKUL SINGAL**

... Petitioner

Through: Mr. Baljit Singh & Ajai Kumar,
Advocates

Versus

**CENTRAL BOARD OF SECONDARY
EDUCATION & ANR.**

....Respondents

Through: Mr. Atul Kumar, Adv. for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petition seeks mandamus directing the respondent No.1 Central Board of Secondary Education (CBSE) and the respondent No.2 Mount St. Marry School, Delhi Cantt., Delhi to correct the Date of Birth in the records of the School and in the Certificate dated 28th

May, 2004 issued by the respondent No.1 CBSE to the petitioner of having passed the All India Secondary School Examination held in the year 2004, from 12th July, 1989 to 12th July, 1988.

2. Notice of the petition was issued to the respondent No.1 CBSE impleaded initially as the sole respondent and counter affidavit filed by the respondent No.1 CBSE. The writ petition was thereafter amended and the respondent No.2 School impleaded as a party. The respondent No.2 School has also filed a counter affidavit. Rejoinders have been filed by the petitioner. The counsel for the petitioner and the counsel for the respondent No.1 CBSE have been heard.

3. It is the case of the petitioner that his father was serving as a Doctor in the Indian Army and which job was transferrable; that the petitioner was borne on 12th July, 1988 at Command Hospital, Chandigarh and his birth was duly registered on 29th July, 1988 with the Department of Health, Chandigarh Administration; that he was admitted to Class II in Army School at Jaipur where his father was then posted and though his date of birth was correctly mentioned as 12th

July, 1988 in the application submitted by his parents for admission in the said School but due to inadvertent clerical mistake, it was wrongly entered in the Army School at Jaipur as 12th July, 1989; accordingly, when the petitioner left the said School, the Transfer Certificate wrongly recorded his date of birth as 12th July, 1989 and on subsequent admissions in the new schools, his date of birth recorded as 12th July, 1989 instead of 12th July, 1988; similarly the date of birth in the records of the respondent No.2 School from which the petitioner appeared in the Secondary School Examination was recorded as 12th July, 1989 and was so reflected in the Certificate issued by the respondent No.1 CBSE. The petitioner claims to have realized the mistake in his date of birth, when he got a fresh copy of his date of birth certificate on 7th March, 2008 from the Municipal Corporation, Chandigarh, the statutory authority with which the record of registration of his birth is available now, to apply for Voter Identity Card. The petitioner at the time of filing this writ petition claimed to be studying in Government Medical College, Chandigarh. Upon the petitioner approaching the respondent No.2 School for correction of his

date of birth, the respondent No.2 School referred the petitioner to the respondent No.1 CBSE. The respondent No.1 CBSE however vide its letter dated 31st March, 2008 rejected the request of the petitioner as time barred. Aggrieved therefrom, the petitioner preferred W.P.(C) No.2980/2008 in this Court which was disposed of on the very first day vide order dated 11th April, 2008 as under:

“Issue notice to the respondents to show cause why rule nisi be not issued. Mr. Atul Kumar, Advocate enters appearance on behalf of respondent. He accepts notice and waives service.

After some arguments, both counsel agreed that it is an appropriate case for reference to the Chairman of Secondary School Education Board with a direction to re-examine the case of the petitioner regarding his date of birth which, according to him, should be 12.7.1988 instead of 12.7.1989, as recorded in the records of the Board and which is also reflected in the certificate of the All India Secondary School Examination 2004 issued by the Board without applying the bar of two years as mentioned in the examination bye-laws 69.2(iv). It is so ordered.

Consequently, the impugned order dated 31.3.2008 passed by the Board is set aside with the direction that the matter be disposed of within a period of three months from today in terms of this order.

The writ petition is disposed of in the above terms.”

4. The respondent No.1 CBSE however vide order dated 14th August, 2008 again rejected the application of the petitioner for change of date of birth on the ground, i) that the original date of birth certificate showing the date of birth as 12th July, 1988 was issued only in the year 2008 while the petitioner had passed Class X Secondary School Examination in the year 2004; ii) that in view of the discrepancy with regard to the fact that incorrect date of birth got entered in all the school records, the document issued in the year 2008 could not be relied on; iii) that the petitioner / his parents were repeatedly in admission forms filling up the date of birth as 12th July, 1988 only. Aggrieved from the said order the present writ petition has been filed.

5. Bye-law, 69.2 of the CBSE Bye-laws relevant in this regard is as under:

“69.2 Change / correction in Date of Birth

- i. No change in the date of birth once recorded in the Board's records shall be made. However, corrections to correct typographical and other errors to make certificate consistent with the school records can be

made provided that corrections in the school records should not have been made after the submission of application form for admission to Examination to the Board.

- ii. Such correction in Date of Birth of a 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 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 along with 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 of date of birth has been made along with attested copy of Certificate issued by the Municipal Authority, if available, 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 along with documents mentioned in Byelaws 69.2(iii) shall be entertained by the Board only within two years of the

date of declaration of result of Class X Examination. No correction whatsoever shall be made on application submitted after the said period of two years.”

6. A perusal of the aforesaid byelaw would show that:

- (i) The application for correction of date of birth cannot be entertained after two years of the date of declaration of result of Class X.
- (ii) Within two years also corrections only to correct typographical and other errors to make Certificate consistent with the school records can be made.
- (iii) That no correction in the school record is also permitted after the submission of application form for admission to examination of the Board.

7. The petitioner does not pass any of the aforesaid tests. There is no dispute that the date of birth on the certificate issued by the respondent No.1 CBSE is the same as in the records of the respondent

No.2 School. The respondent No.2 School in its counter affidavit has also stated that the date of birth in its records was recorded on the basis of the admission form filled up by the petitioner / his father in which the date of birth of the petitioner was given as 12th July, 1989 only and not 12th July, 1988 as is now claimed. It is the contention of both CBSE and the respondent No.2 School that the case set up by the petitioner is unbelievable in as much as it is the case of the petitioner himself that he was repeatedly changing his schools and the error if any made in the first School would have come to light; rather than having the said error corrected, the petitioner / his parents allowed the same to continue and on the contrary themselves in the admission forms continued to fill up the date of birth as 12th July 1989.

8. The counsel for the petitioner has on the contrary contended that in so far as the bar of two years is concerned, the same would not come in the way of the petitioner in view of the order aforesaid in the earlier writ petition. Qua the other two bars aforesaid, he relies upon the judgments of Single Judges of this Court in ***Kumari Para Vs. Director***,

Central Board of Secondary Education 111 (2004) DLT 573 and in *Rajesh Kumar Jain Vs. The Secretary, Central Board of Secondary Education* 79 (1999) DLT 348. While in *Kumari Para* (supra), this Court directed the respondent to carry out the correction to bring the date of birth in consonance with the certificate issued under the Registration of Births and Deaths Act, 1969, in *Rajesh Kumar Jain* (supra), correction of date of birth was allowed since the school itself had corrected the same holding it to be a typographical error.

9. Per contra, the counsel for the respondent No.1 CBSE contends that the aforesaid two judgments are no longer good law in view of the order dated 24th January, 2011 of the Division Bench of this Court in LPA No.783/2010 titled *Bhagwat Dayal Vs. CBSE* and the review petition whereagainst was also dismissed on 14th February, 2011. He also contends that the Division Bench has held that beyond two years correction could not be made.

10. In my view the bar of two years pleaded by the respondent No.1 CBSE would not come in the way of the petitioner in view of the

consent order dated 11th April, 2008 (supra) in the earlier writ petition preferred by the petitioner. Even though the Division Bench has since held that the said bar is sacrosanct but the respondent No.1 CBSE having in the earlier writ petition agreed that the matter would be considered afresh without applying the bar of two years, cannot now be heard to contend otherwise.

11. However, the petitioner is unable to cross the other two bars imposed by bye-law 69.2 (supra). The correction sought in the record of the respondent No.1 CBSE is not to bring the Certificate issued by the respondent No.1 CBSE in consonance with the school records. Rather the petitioner as aforesaid is seeking the correction of the school records also.

12. I have considered whether a writ can be issued against the respondent No.2 School to correct the date of birth in its records and which correction can lead to the correction in the records of the CBSE also. The counsel for the respondent No.1 CBSE has contended that the same cannot be ordered in writ jurisdiction, being a disputed question.

It is further contended that no reliance can be placed upon the admission form of the first school produced now for the first time and adverse inference has to be drawn from the factum of the petitioner / his father having themselves filled up the date of birth as 12th July, 1989.

13. I however feel myself bound by the judgment of the Division Bench in *Bhagwat Dayal* (supra). The Division Bench in the said judgment held the petitioner disentitled to the relief for the reason of having not asked for the change of date of birth earlier when he ought to have come to know of the mistake, if any. The said dicta applies on all fours to the facts of the present case also.

The petition is accordingly dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 29, 2011

‘gsr’

(Corrected and released on 18th April, 2011)