

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 1277/2010**

Decided on: 25.01.2012

IN THE MATTER OF
NUTAN KUMARI

..... Petitioner

Through: Mr. Mukesh Gupta, Advocate with
Mr. Keshav Thakur, Advocate

versus

CBSE

..... Respondent

Through: Mr. Amit Bansal, Advocate

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (ORAL)

1. This petition has been preferred by the petitioner praying *inter alia* for directions to the respondent/CBSE to decide her representation dated 24.04.2009, to correct her date of birth as recorded in the Secondary School and Senior Secondary School Certificates issued to her in the year 2004 & 2006, from 20.02.1986 to 12.10.1988, and further issue corrected certificates to her.

2. In a nutshell, the facts of the case as set out in the writ petition are that the father of the petitioner, during his tenure with the Indian Army, was posted at different stations from time to time, due to which, his family members including the petitioner had to shift their place of residence and her school on a number of occasions. In the year 2004,

the petitioner had passed her secondary school examination from Kendriya Vidyalaya Ballygunje, Kolkata, (West Bengal) under the respondent/CBSE. Thereafter, in the year 2006, the petitioner appeared for her class XII examinations from Kendriya Vidyalaya No.1, Gandhi Nagar, Jammu under the respondent/CBSE. The respondent/CBSE had issued two certificates to the petitioner, the first one was upon her passing class X examinations in March 2004 and the second one was upon her passing class XII examinations in March 2006. In the year 2009, the petitioner took admission in a five year law course in Modern Law College, Ganeshkhind, Pune-53, University of Pune.

3. It is stated by the learned counsel for the petitioner that presently the petitioner is studying in the fifth and final year of the law course and she is simultaneously preparing for various competitive examinations. As per the petitioner, during the course of making preparations to appear in the said examinations, she checked her school leaving certificates and other related documents and found that although her correct date of birth is 12.10.1988, the same had been incorrectly recorded by the respondent/CBSE in the class X certificate as 20.02.1986. Immediately thereupon the petitioner claimed that she had approached the Law College, Pune University with a request to carry out necessary correction in its records but the authorities expressed their inability to do so till the respondent/CBSE carried out necessary correction in its records.

4. It is averred in the writ petition that the petitioner had paid a number of visits to the office of the respondent/CBSE at Delhi and finally submitted a representation dated 24.04.2009, seeking correction of her date of birth in its records. On 10.12.2009, the petitioner also got a notice published in the Gazette of Maharashtra notifying her changed date of birth as 12.10.1988. It is the case of the petitioner that the date of her birth has been wrongly noted in the records of the respondent/CBSE as 20.02.1986 whereas her actual date of birth is 12.10.1988 and the said fact can be verified from the documents enclosed with the writ petition. The petitioner claims that she has not taken any undue advantage of the incorrect recording of her date of birth and, therefore, directions be issued to the respondent/CBSE to carry out the necessary rectification in its records. In support of his argument that the petitioner is entitled to change of date of her birth in Class X Certificate issued by the respondent/CBSE, counsel for the petitioner relies upon the judgment in the case of Kumari Para vs. Director, Central Board of Secondary Education reported as **AIR 2004 Delhi 310** and a decision of the Supreme Court in the case of Narinder Kaur vs. Punjab & Haryana High Court & Ors. decided on 04.02.2011 and reported as **(2011) 11 SCC 53**.

5. Counsel for the respondent/CBSE opposes the present petition and states that the petitioner is dis-entitled from claiming the relief of change of date of birth so belatedly and such a request cannot be acceded to in view of Byelaws 69.2, which stipulates that any request for

correction in the date of birth has to be made within a period of two years of the date of declaration of her result of class X examination. It is submitted by the learned counsel that the petitioner had passed her class X examinations in the year 2004, whereas she had made a representation to the respondent/CBSE for correction of her date of birth after a period of five years, on 24.04.2009, and that the respondent/CBSE does not permit a change in the date of birth in its records and furthermore, it permits such a correction only in circumstances arising out of a clerical error, which is not the case here.

6. It is further clarified by the counsel for the respondent/CBSE that in any case, the petitioner could not have approached the CBSE directly with a request for correction and as per the CBSE Examination Byelaw 69.2, it was for the petitioner to have submitted an application for carrying out such a correction to the head of the school, who could have forwarded the same to the respondent/CBSE along with the relevant documents. He states that the aforesaid procedure was not followed by the petitioner and for reasons best known to her, she has not even impleaded the school, from where she had passed class X examination as a co-respondent in the present proceedings. Nor has the petitioner placed on record the requisite documents in support of her contention that the school had erroneously recorded her date of birth as 20.02.1986. He states that the aforesaid exercise had to be undertaken by the respondent/CBSE by retrieving the relevant records pertaining to the

petitioner from her school and they have been enclosed with the counter affidavit, which bear out the fact that the petitioner had herself filled up her date of birth in various documents submitted by her during her school days that shows that she had herself indicated her date of birth as 20.02.1986. In support of his submission that the petitioner's request for change of date of birth cannot be acceded to, in view of the provisions of the aforesaid Byelaw, reliance is placed on a recent decision of a Division Bench of this Court in the case of Bhagwat Dayal vs. CBSE & Ors. reported as **180 (2011) DLT 1 (DB)**.

7. This Court has heard the counsels for the parties and has carefully examined the documents placed on record by both sides.

8. The facts of the case have already been noticed above. Bye-law 69.2 of the CBSE Examination Bye-laws deals with change/correction in date of birth and the same is reproduced hereinbelow:-

"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 to 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 admissions; 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 Bye-laws 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."

9. In the present case, the documents placed on record by the petitioner show that the discharge slip dated 15.10.1988 was issued by the Military Hospital, M.H. Danapur Cantt., and reflects the name of the father of the petitioner, as Shri S.N. Singh, Unit 56 APO. The said slip has three columns, namely, (i) date of admission/discharge, (ii) International Code No. and (iii) Diagnosis. Under the column, "date of

admission/discharge, two dates are shown, one is 12.10.1988 and the other is 15.10.1988. In the column, "International Code No.", 'V-30' is endorsed and in the column, "Diagnosis", 'single born' is mentioned. The other relevant document filed by the petitioner is the Gazette notification dated 10.12.2009, got published by her, whereunder it is notified that her date of birth is 12.10.1988 and not 20.02.1986. The petitioner has also placed on record a copy of her progress report for the academic year 1996-97 issued by the Kendriya Vidyalaya No.1, Sangrur Road, Patiala Cantt, where she was studying in class III-B against admission No.7926. On the said document, the date of birth of the petitioner is endorsed as 20.02.1986. Apart from the aforesaid documents, the petitioner has not filed any other document pertaining to her date of birth.

10. As regards the respondent/CBSE, it has filed on record a copy of the petitioner's application for admission in Kendriya Vidyalaya, Ballygunge. The said application is dated 03.11.2000. Column number two of the said application relates to the date of birth. Under the said column, there are two sub columns, one of which requires the applicant to fill up the date of birth in figures and the other one requires the applicant to fill up the date of birth in words. In both the sub-columns, the date of birth of the petitioner has been filled in as 20.02.1986. Similarly, a perusal of the Transfer Certificate dated 27.10.2000 issued by the Kendriya Vidyalaya, Danapur Cantt, the date of birth of the petitioner is reflected in column No.6 as 20.02.1986, both in figures as also in words.

Lastly, the respondent/CBSE has placed on record an extract of the Register forwarded by the school, where the petitioner was studying in class X, namely, Kendriya Vidyalaya, Ballyganje, Kolkata, whereunder her name features at Sr.No.5 and against the column of her date of birth, the same has been reflected as 20.02.1986, both in figures and in words.

11. When all the aforesaid documents are taken into consideration collectively, it clearly falsifies the contention of the counsel for the petitioner that in view of the petitioner's father being employed in the Indian Army and consequently, having had to move from station to station with his family, due to a *bonafide* error, her date of birth was wrongly recorded in the school where she took admission, as 20.02.1986 instead of 12.10.1988. It is pertinent to note that Bye-law 69.2 stipulates that an application for correction of date of birth should be forwarded by the head of the school alongwith the documents mentioned therein and the same would be considered by CBSE only within a period of two years from the date of declaration of the result of class X examination. It further clarifies that no correction whatsoever would be made on an application submitted after expiry of the aforesaid period of two years.

12. In the present case, admittedly the petitioner had approached the respondent/CBSE after a period five years if reckoned from the date of passing her class X examination. Further, the falsity of the stand of the petitioner, that she had discovered the fact that her date of birth had been incorrectly reflected by the respondent/CBSE in its records only

during the course of her making preparations for appearing in the competitive examinations while studying in the five years law course, is clear from the document placed at page 28 of the paper book, which is a copy of the petitioner's progress report issued by the school, where she was studying when in class III-B. The said document reveals that the date of birth of the petitioner had been mentioned as 20.02.1986. The aforesaid position has remained consistent even thereafter, which fact is borne out from a perusal of the copy of the application for admission submitted by/on behalf of the petitioner to the Kendriya Vidyalaya, Ballygunge on 03.11.2000, wherein her date of birth had again been mentioned as 20.02.1986, both, in words and in figures. Similarly, the Transfer Certificate issued to the petitioner by Kendriya Vidyalaya, Danapur Cantt. on 27.10.2000 also reflected her date of birth as 20.02.1986. Lastly, the extract of the Register maintained by the school as forwarded to the CBSE reflects the same position. In the above facts and circumstances, the petitioner cannot be permitted to approach the Court by laying a challenge to the date of her birth as recorded by the respondent/CBSE in her Class X Certificate, i.e., 20.02.1986 and further, by calling upon it to change the same to 12.10.1988, as claimed by her.

13. Reliance placed by the learned counsel for the petitioner on the decision in the case of Kumari Para (supra) is misconceived inasmuch as Bye-laws 69.1 and 69.2 were not a subject matter of examination in the aforesaid case. Furthermore, the Single Judge had particularly

recorded in para 15 of the aforesaid judgment that the petitioner therein had submitted a representation within a period of two years from the date of declaration of her result of class X examination. In the case of Narinder Kaur (supra), the factual matrix is again entirely different. The said case is one relating to a service matter, where the appellant therein was selected in the Haryana Civil Services (Judicial) and she joined duties on 20.05.2000. Realizing that her date of birth was recorded wrongly in the birth certificate, she submitted an application dated 12.04.2002, within a period of two years from the date of her entry into Government service, requesting that her date of birth be changed from 26.01.1971 to 09.01.1972. The said request was turned down by the Punjab & Haryana High Court on the administrative side. Aggrieved by the said rejection order, the appellant therein preferred a writ petition before the High Court, which was also dismissed. Finally the appeal by the appellant filed before the Supreme Court was allowed by the Supreme Court and it was observed that the High Court had not undertaken any inquiry regarding the change of the date of birth of the appellant and further, the State of Punjab had submitted an affidavit confirming her correct date of birth, which fact could not be disputed or controverted in view of the presumptive value of such a record.

14. In the present case, no such inquiry is required to be undertaken by this Court at the behest of the petitioner. In the first place, it was for the petitioner to have placed on record relevant

documents to establish her stand that right through her school days, the schools where she had taken admission from time to time, had recorded her date of birth as 12.10.1988 and further that she had approached the head of the school where she was studying and from where she had taken her Class X examinations, to point out the error, if any, while recording her date of birth. Pertinently, the petitioner had taken her Class XII examinations from the same school and has passed out in the year 2006, but even at that time, she had neither noticed the above discrepancy, nor did she take any steps to approach the respondent/CBSE with such a request. Rather, the petitioner made such a request only in the year 2009. On the contrary, the respondent/CBSE had to make efforts to trace the records pertaining to the petitioner from the different schools, where she had studied from time to time and all of them when perused, bear out the fact that the date of birth of the petitioner was recorded therein as 20.02.1986 and not as 12.10.1988 as claimed by her.

15. For all the reasons stated hereinabove, this Court does not find any merit in the present petition, which is dismissed while leaving the parties to bear their own costs.

JANUARY 25, 2012
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(HIMA KOHLI)
JUDGE