

Court No. - 52

Case :- WRIT - C No. - 6911 of 2016

Petitioner :- Richa Tripathi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Jai Prakash Singh, Sanjeev Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Jai Prakash Singh, learned counsel for petitioner and Sri Rajkumar Singh learned Standing Counsel.

2. It is the case of petitioner that her date of birth is duly recorded in her birth certificate as 03.06.199, even in domicile certificate, same date of birth i.e. 03-06-1991 is recorded and also in the scholar register and transfer certificate issued by Headmaster of primary school known as 'Vibhuti Jankalyan Vidhyalay, Bhujgi, Ambedkar Nagar as well as in the transfer certificate of Junior High School, the same date of birth i.e. 03.69.1991 is clearly mentioned. In the High School Certificate also, petitioner's date of birth is recorded as 03.06.1991 but in the High School Mark-Sheet, petitioner's date of birth is wrongly recorded as 03.06.1981. When this fact came into knowledge of petitioner's father, he approached Principal, Janta Inter College, Newada, Ambedkar Nagar (wherefrom petitioner had appeared in the Board's examination) for correction of petitioner's date of birth along with copies of transfer certificates issued by the Headmasters of Primary School and Junior High School.

3. On 21.07.2011, Principal of the said college sent a letter to Regional Secretary, Madhyamik Shiksha Parishad, Varanasi for correction of petitioner's date of birth. On 22.01.2013, office of Regional Secretary, Madhyamik Shiksha Parishad, Varanasi issued a communication intimating the Principal of the said college and petitioner that as per order of Deputy Secretary, the matter is being sent back without any correction for the reasons that it has become Kalateet (barred by time). Since the

Regional Office of the Board had not examined petitioner's claim for correction of her date of birth on merits, so petitioner sent an application before the Regional Secretary on 02.03.2013 enclosing High Court's judgment reported in **Jugendra Singh Vs. Board of High School and Intermediate Education, U.P., Allahabad and Others (1987 UPLBED 163)**. Thereafter petitioner filed the present petition seeking following relief:

"(i) to issue a writ, order or direction in the nature of mandamus commanding the Regional Secretary. Uttar Pradesh Madhyamik Shiksha Parishad, Varanasi to examine Petitioner's claim for correction of date of birth on merits ignoring the outer limit of two years mentioned in Regulation 7 of Chapter-III Part-II-B of U.P. Intermediate Education Act. 1921 within the time specified by the Hon'ble Court:

(ii) to issue a writ, order or direction in the nature of mandamus commanding the Regional Secretary. Uttar Pradesh Madhyamik Shiksha Parishad, Varanasi Respondent No. 3 to examine Petitioner's claim for correction of date of birth espoused through her representations dated 02-03- 2013 and 10-12-2015 (filed as Annexure Nos. 9 and 10 respectively to this petition) within the time specified by the Hon'ble Court:

(iii) to issue any other writ, order or direction which this Hon'ble Court may deem fit and proper and in the circumstances of the case:

(iv) to award costs of the petition to the Petitioner."

4. Vide order dated 08.09.2021 while keeping this petition pending, a Coordinate Bench of this Court directed respondent no.2, Uttar Pradesh Madhyamik Shiksha Parishad, Allahabad to decide the application of petitioner dated 02.03.2013 in view of the law laid down vide judgment dated 11.02.2014 passed by Division Bench of this Court in the case of **Anand Singh Vs. U.P. Board of Secondary Education and others (Special Appeal No.160 of 2014)** within a period of one month from presentation of a certified copy of this order.

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5. In pursuance of the said order, petitioner submitted an application dated 24.09.2021 along with a copy of the order dated 08.09.2021 passed by Coordinate Bench of this Court. Respondent no.2 vide order dated 01.12.2021, rejected the application of petitioner on the ground it was filed beyond the prescribed period of three years as prescribed in Regulation 7 of the U.P. Intermediate Education Act, 1921. Thereafter petitioner filed an amendment application before this Court for seeking amendment in the prayer clause and now she is seeking quashing of the order dated 01.12.2021 passed by Secretary, Madhyamik Shiksha Parishad, U.P., Prayagraj by which the application preferred by petitioner for seeking correction of her date of birth in High School Marksheet has been rejected.

6. Learned counsel for petitioner submitted that in all three transfer certificates issued by Primary School, Junior High School and High School, petitioner's date of birth is recorded as 03.06.1991 and also in birth certificate, her date of birth is the same i.e. 03.06.1991 but the responding authority without considering the claim of petitioner on merits, rejected the same on the ground of being barred by limitation. Learned counsel for petitioner relied upon judgment passed by Division Bench of this Court in the case of **Anand Singh (supra)**, judgment passed by a Coordinate Bench of Lucknow High Court in the case of **Jyoti Pandey Vs. State of U.P. and others [2021 (7) ADJ 332 (LB)]** and judgment passed by a Division Bench of this Court in the case of **Jugendra Singh (supra)**.

7. Learned Standing Counsel vehemently opposed the prayer as made in the petition and rebutted the stand taken up by learned counsel for petitioner by submitting that the application preferred by petitioner was time barred and as such, the same has rightly been rejected.

8. In the case of **Jyoti Pandey (supra)**, the Coordinate Bench held as under:-

"(13) It is evident that there was an inadvertent error in filling up of her form by the School Authorities as a student of Classes IX or Xth is an adolescent and not competent or mature enough to correctly fill up the form. This Court can take judicial notice of the fact that it is always the teachers who fill up the form, and the students mostly sign on the dotted line. A student like the petitioner who may have been only 14 years of age at the time of filling up of her form for High School may have believed that whatever her teacher wrote in her application form was correct and may have signed without verifying the Date of Birth details from the Scholar Register maintained in her school on the basis of Transfer Certificate is issued by the Junior High School from which she passed her Classes VII and VIII.

(14) In such a case the observations made by a Co-ordinate Bench of this Court in Akash Sharma Vs. State of U.P. and Others reported in 2016 (3) Alld. L.J 146, squarely apply. This Court in Akash Sharma (Supra) was considering a similar case where the writ petitioner was seeking a correction in the Date of Birth as printed in the High School pass Certificate-Cum-Marksheet which had been incorrectly shown. The Transfer Certificate and Character Certificate issued by the School had shown his Date of Birth correctly. The petitioner had thereafter passed his Intermediate from a different Inter College and took his Transfer Certificate from the said College also which showed his correct date of birth. The Institution from where the petitioner appeared in High School Examination had certified that in the School records the correct date of birth of the petitioner had been recorded as of the year 1993 and due to some mistake it was printed in the High School Certificate as 1990. The petitioner applied for correction under Regulation-7 Chapter-3 of the Regulation framed under the Intermediate Education Act and where a limitation of three years was provided for moving such application. The writ petitioner had admittedly moved the application after about five years from the date of issuance of High School Certificate. Consequently, his application was rejected by the Secretary of the Board. The Court observed in Paragraphs-11 to 19 of the said judgment as follows:-

"(11) A bare reading of above Regulation indicates that the clerical mistake occurring in the certificate, issued by the High School and Intermediate Education Board U.P. is rectifiable provided the candidate applies for its correction within a period of two years from the date of issuance of the certificate.

(12) *It is important to note that it is not the case of any party that the mistake of date of birth appearing in the High School Certificate of the petitioner had occurred due to any mistake on the part of the petitioner or that his correct date of birth is not 01.01.93 as appears in the records of the School/College, meaning thereby the correct date of birth of the petitioner is 01.01.93 and not 01.01.90 as mentioned in the High School Certificate.*

(13) *An authority vested with the jurisdiction to issue a certificate and to maintain record of it has inherent power to rectify the mistake, if any, that may occur in the certificate so issued provide the mistake is genuine and the person concern has no role attached to it. Therefore, any mistake of a clerical nature accruing in the certificates can be rectified on the application of the candidate concern or even by the authority concern in suo motu exercise of its inherent power whenever the mistake comes to its notice. In other words, any mistake in the High School Certificate can always be rectified either on an application by the person concern or by the authority/Board itself in suo- motu exercise of its inherent power.*

The limitation of moving an application for rectification of the mistake of a clerical nature appearing in the High School Certificate is for the candidates and not for the Board to take suo-motu action in exercise of inherent power.

(14) *The law of limitation is founded on public policy so as to limit the life span of a litigation or the legal remedy. It does not aims to defeat the rights of the parties. In the case of N. Balakrishnan vs. M. Krishnamurthy,; (1998) 7 SCC 123 the Supreme Court of India observed if the remedy availed by the party who has been wronged does not smack of malafides or is not by way of dilatory tactics, the Courts must show utmost consideration to the suitor. In other words, a bonafide delay may not by itself be treated as sufficient to debar the remedy particularly where the record exfacie shows miscarriage of justice.*

(16) *In the instant case, there is no dispute that the correct date of birth of the petitioner is 01.01.1993 and that in the High School Certificate it has been incorrectly mentioned as 01.01.90.*

(17) *The limitation of two years provided in applying for rectification of the certificate is applicable to the candidates but there is no limitation for the Board to exercise its inherent power to correct the certificate issued by it. Thus, the Board certainly in*

exercise of its suo motu inherent power is authorised to correct a clerical mistake or error appearing in the High School Certificate once it is brought to its notice. It is incumbent duty of the Board to ensure that the certificates issued by it are correct and does not suffer from any error or mistake. Therefore, in order to put its records straight, the Board is under an obligation to correct all certificates issued by it irrespective of the limitation placed under Regulation-7 of Chapter-III of the Regulation in exercise of its inherent power in the particular facts and circumstances of the each case. The law of limitation cannot be pressed into service by the Board while exercising its inherent power so as to defeat the right of the petitioner to have his incorrect date of birth recorded in the High School Certificate rectified.

(18) The Regional Secretary of the Board has simply rejected the application of the petitioner on the ground of limitation without application of mind to the facts and circumstances of the case. Thus, he failed in discharge the pious obligation to rectify the mistake occurring in the public record which are supposed to maintain correctly.

(19) Accordingly, even if the application of the petitioner was beleted the Board ought to have corrected the mistake in exercise of suo-motto jurisdiction. The Regional Secretary of the Board has failed to exercise the jurisdiction so vested in him in law in passing the order dated 21.10.2014....."

9. In the case of **Jugendra Singh (supra)**, the Division Bench held as under:-

"3. Rules are made for facility of working in the offices and not to prove a pretext for shrinking the responsibility. The letter shows utter lack of under- standing and disinclination to help those who come to the office from hundreds of miles for such petty redress. The assistant in the office instead of examining the papers and putting a note which of course would have involved some labour found an easy escape that the application was received after two years. And the Assistant Secretary instead of applying his own mind appears to have succumbed to it by affixing his seal, presumably without even going through the papers. How else can the inaction of opposite parties be explained. The application for correction forwarded by the principal contained the admission form for Junior High School, the certificate of having passed it, the form filed by petitioner in 1978, affidavit of petitioner, recommendation of Inspector of Schools. In all the relevant papers age of petitioner is entered as December, 1963. To decide

whether the claim of petitioner was correct or not these papers had to be examined. That could of course be avoided only in the manner as been done. Not only that no reasonable person could have come to conclusion in the circumstances that the application for correction was belated. The High School certificate was sent by Board after five years. Probably because no time limit is fixed. It was received in the college in September, 1983. The petitioner deposited it in the same month with the principal. In November, 1983 the principal issued a certificate that it has been sent to Board. Another certificate date 26th August, 1985 also shows that the certificate had been sent for correction. Therefore, petitioner did whatever was possible on his part to get the corrections made immediately. He was informed also in November 1983, August 1985 and June 1986 that papers have been sent. The first was immediate. The second was well within time. If the principal committed the default it could not recoil on petitioner. Even the rule of limitation the expiry of which confers benefit on others is not construed so strictly. Here no right accrued to anyone by lapse of two years. Except that petitioner by mistake in office of Board became older by four years. Moreover, can there be any time limit for correcting one's own mistake. One can understand rejection of such application of a person claiming correction in his date of birth because it was erroneously recorded in the form which crept into the certificate. But not where the mistake is not of the candidate but of the Board itself. The least that could be expected of Board in such matters is to rectify the errors the moment it is pointed out. And that is why the approach in offices should not be helping and co-operative than frustrating and avoiding."

10. In view of the facts and circumstances of the case and the judgments relied upon, I am of the view that the impugned order of the second respondent, rejecting the application submitted by the petitioner for correction of her date of birth in the High School Marksheet only on the ground of delay, is unsustainable and the same is liable to be set aside.

11. Accordingly, the impugned order dated 01.12.2021 is set aside, respondent no.2 is hereby directed to reconsider the application having due regard to all the documentary evidence which may be produced by the petitioner. The respondent no.2 would also be at liberty to summon

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all the relevant records from the concerned institution for the purpose of deciding the application of the petitioner. Respondent no.2 shall now pass a fresh order in accordance with law as enunciated above within a period of three months from the date of receipt of a certified copy of this order.

12. The writ petition accordingly stands **allowed**.

Order Date :- 22.11.2023

Vivek Kr.

(Saurabh Srivastava, J.)