

Court No. - 10

Case :- WRIT - C No. - 37919 of 2023

Petitioner :- Mayank Singh Dhangar

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Rajesh Kumar Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra,J.

1. Heard Shri Rajesh Kumar Tiwari, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and perused the record.

2. The petitioner's name Mayank Kumar is recorded in the records of the Board as well as in the certificates issued by the Board.

3. The case of the petitioner is that he wants to be known as Mayank Kumar Dhangar and when he was minor, his father took steps for such correction but such correction could not be made, and therefore, a writ of mandamus has been sought commanding the respondent no.2 to change the name of the petitioner in pursuance of Gazette publication. Another relief has been claimed for deciding the representation dated 12.05.2022 by the respondent no.2.

4. Learned Standing Counsel has opposed the writ petition by referring to Regulation 40 (Ga) of Chapter XII of the Regulations contained in the Intermediate Education Act, 1921 that addition of a religion/caste etc cannot be allowed.

5. It has been argued that the identical controversy has been dealt with by the Supreme Court in the judgment dated 03.06.2021 passed in Civil Appeal No.3905 of 2011 (***Jigyada Yadav (Minor) through guardian/father Hari Singh Vs. Central Board of***

Secondary Education and others), reported in (2021) 7 SCC 535. In fact, learned counsel for both sides have placed reliance upon the same judgment and it has been argued that even if the Apex Court has permitted change of name, different categories have been spelt out in the judgment of **Jigyasa Yadav** (supra). Reference to paragraph no.171 has been made, which reads as follows:-

"171. As regards request for "change" of particulars in the certificate issued by the CBSE, it presupposes that the particulars intended to be recorded in the CBSE certificate are not consistent with the school records. Such a request could be made in two different situations. The first is on the basis of public documents like Birth Certificate, Aadhaar Card/Election Card, etc. and to incorporate change in the CBSE certificate consistent therewith. The second possibility is when the request for change is due to the acquired name by choice at a later point of time. That change need not be backed by public documents pertaining to the candidate.

(a) Reverting to the first category, as noted earlier, there is a legal presumption in relation to the public documents as envisaged in the 1872 Act. Such public documents, therefore, cannot be ignored by the CBSE. Taking note of those documents, the CBSE may entertain the request for recording change in the certificate issued by it. This, however, need not be unconditional, but subject to certain reasonable conditions to be fulfilled by the applicant as may be prescribed by the CBSE, such as, of furnishing sworn affidavit containing declaration and to indemnify the CBSE and upon payment of prescribed fees in lieu of administrative expenses. The CBSE may also insist for issuing Public Notice and publication in the Official Gazette before recording the change in the fresh certificate to be issued by it upon surrender/return of the original certificate (or duplicate original certificate, as the case may be) by the applicant. The fresh certificate may contain disclaimer and caption/annotation against the original entry (except in

respect of change of name effected in exercise of right to be forgotten) indicating the date on which change has been recorded and the basis thereof. In other words, the fresh certificate may retain original particulars while recording the change along with caption/annotation referred to above (except in respect of change of name effected in exercise of right to be forgotten).

(b) However, in the latter situation where the change is to be effected on the basis of new acquired name without any supporting school record or public document, that request may be entertained upon insisting for prior permission/declaration by a Court of law in that regard and publication in the Official Gazette including surrender/return of original certificate (or duplicate original certificate, as the case may be) issued by CBSE and upon payment of prescribed fees. The fresh certificate as in other situations referred to above, retain the original entry (except in respect of change of name effected in exercise of right to be forgotten) and to insert caption/annotation indicating the date on which it has been recorded and other details including disclaimer of CBSE. This is so because the CBSE is not required to adjudicate nor has the mechanism to verify the correctness of the claim of the applicant."

6. A perusal of the aforesaid judgment shows that the Supreme Court had dealt with two categories of situations under which change of name could be sought. The first category relates to those cases where, on the basis of public documents like Birth Certificate/ Adhaar Card/ Election Card, etc., change of name is sought in the CBSE certificate consistent to the said record and the second category relates to those situations where a person wants to acquire name by choice at a later point of time. The Apex Court has held that such change need not be backed by public documents pertaining to the candidate, but request in this regard may be entertained upon insisting for prior permission/ declaration by a

Court of law in that regard and publication in the Official Gazette including surrender/return of original certificate (or duplicate original certificate, as the case may be) issued by CBSE and upon payment of prescribed fees. The fresh certificate as in other situations referred to above, retain the original entry (except in respect of change of name effected in exercise of right to be forgotten) and to insert caption/annotation indicating the date on which it has been recorded and other details including disclaimer of CBSE. This is so because the CBSE is not required to adjudicate nor has the mechanism to verify the correctness of the claim of the applicant.

7. Learned Standing Counsel has also referred to paragraphs no. 156 and 157 of the same judgment and has argued that the Apex Court has insisted upon obtaining a declaration by the civil court.

8. Learned Standing Counsel has also placed reliance upon the judgment of this Court in the case of **Pooja Yadav vs State of U.P. and 3 others**, reported in 2023 (10) ADJ 176, in which judgment of **Jigyasa Yadav** (supra) has been relied upon.

9. Learned counsel for the petitioner has also placed reliance upon the judgment dated 25.05.2023 passed in Writ C No. 3671 of 2022 (**Md. Sameer Rao vs State of U.P. and 2 others**) however learned Standing Counsel submits that the said order has already been stayed by this Division Bench by order dated 13.07.2023 in Special Appeal No. 459 of 2023 (**State of U.P. and 2 others vs Md. Sameer Rao**) and otherwise submits that once the Apex Court has decided the controversy, the remedy is to file a suit only.

10. Though the learned counsel for the petitioner has placed reliance upon another decision of this Court contained in the order

dated 18.07.2022 passed in Writ-C No.16056 of 2021 (***Rashmi Srivastava Vs. State of U.P. and others***), I find that this Court, even in the said judgment, has referred to the judgment of Supreme Court in the case of ***Jigyada Yadav*** (supra) and issued a direction for making an application before the Board in consonance with the said judgment.

11. Section 34 of the Specific Relief Act, 1963 needs to be referred here in so far as the power of civil court to grant a declaration with regard to status of a person is concerned. The said provision reads as under:-

"34. Discretion of court as to declaration of status or right.? Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

12. It is clear from Section 34 of the Act, 1963, that power to grant or declare status as the petitioner desires, vests exclusively in Civil Court that is competent enough to grant such decree.

13. Once the Apex Court in the case of ***Jigyada Yadav*** (supra) has emphasized upon obtaining a declaration from a civil court with regard to the name which a person wants to adopt by choice, this Court cannot take a different view and therefore deciding this case on the same lines, the writ petition is **disposed of** permitting the petitioner to obtain a declaration from the civil court with regard to his claim and once such a declaration is obtained, he is at liberty to

approach the Board with appropriate documents.

14. In case such requirements are completed at the end of petitioner and the representation is made along with necessary documents through proper channel i.e. through Principal of the College before the Board, the Board shall consider the same in the light of ratio laid down by the Apex Court in the case of ***Jigya Yadav*** (supra).

Order Date :- 2.11.2023

AKShukla/-