

**Reserved on 13.12.2023**

**Delivered on 16.12.2023**

**Court No. - 13**

**Case :- CIVIL MISC REVIEW APPLICATION No. - 45 of 2023**

**Applicant :-** Vikas Sharma

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Deptt. Civil Secrett. Lko. And 4 Others

**Counsel for Applicant :-** Mratunjay Singh, Rajesh Kumar Singh

**Hon'ble Karunesh Singh Pawar, J.**

1. Feeling aggrieved with the judgment and order dated 24.3.2021 passed in Writ C No.1963 of 2023 Vikas Sharma versus State of U.P. and others whereby the writ petition was dismissed being devoid of merit, present review petition has been filed with the following prayer :

*"WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to allow the review application and review the judgment and order dated 24.03.2021 passed in Writ C- No. 1963 of 2023; Vikas Sharma Vs State of U.P. & others by treating the application of petitioner in time and to direct the opposite parties to correct the date of birth of applicant/petitioner in High School mark sheet accordingly and/or any other order or direction which this Hon'ble Court may deem just, fit and proper under the circumstances of the case, may kindly be passed"*

2. The facts of the case have been enumerated in the order dated 24.3.2023 which is extracted herein below :

*"1. Heard learned counsel for the petitioner and Mr. Vinod Kumar Singh, learned Additional Chief Standing Counsel for opposite parties 1 to 4.*

*Notice to respondent No.5 is dispensed with in view of the proposed order.*

*2. By means of this writ petition, the petitioner has prayed for issuance of a writ of mandamus directing the respondents to correct date of birth of the petitioner as 7.9.2003 in High School Mark Sheet.*

*3. Learned counsel for the petitioner submits that the petitioner while studying in Vimla Devi Public Inter College, Kaudha, Hardoi appeared in the High School Examination, 2017 conducted by Board of High School and Intermediate Education, U.P. and admit card was issued and the petitioner's roll Number was 1117666. The result was declared on 9.6.2017, in which the petitioner was declared successful with 67.16% marks. The petitioner after declaration of the result saw the mark sheet on Internet which shows the date of birth as wrongly transcribed as 7.9.2001. The petitioner informed the school with a written request on 19.6.2017.*

*It is submitted that instead of correct date of birth of the petitioner, i.e. 7.9.2003, incorrect date of birth 7.9.2001 has been recorded in the High School mark sheet and certificate of the petitioner. After receiving the original mark sheet from the school on 19.8.2017, the petitioner submitted an application through his father on 24.8.2017 to the Principal of the College. Thereafter, the petitioner moved an application along with declaration on the prescribed format of the Board with an affidavit by parent, transfer certificate of Class-VII, issued by Shri Guru Ram Rai Public School, Shahabad, Hardoi and other required documents on 26.12.2020 through Speed Post with a request to correct the date of birth of the petitioner in the High School mark sheet.*

*It is submitted that the date of birth of the petitioner mentioned in the Aadhar Card and School record is 7.9.2003 which is evident from perusal of the transfer certificate issued by Sri Guru Ram Rai Public School, Shahabad Raod, Hardoi. It is submitted that the petitioner has passed High School in the year 2017 and even after lapse of six years, the respondents have not made correction in the mark sheet. It is submitted that recording of incorrect date of birth in the High School mark sheet has caused great prejudice to the petitioner as it will affect his future employment and other benefits.*

*4. Per contra, Mr. Vinod Kumar, learned Addl. Chief Standing Counsel has relied on Part II B, Chapter III Regulation 7 framed under U.P. Intermediate Education Act, 2021 as amended in 2013 and submits that an application for correct of date of birth in the High School certificate has to be given within three years from the date of issuance of the certificate by the Board. In this case, the application to the Board has been given on prescribed format by the petitioner on 26.12.2020 which is admittedly after expiry of three years of period. Therefore, no order has been passed by the Board, nor could have been passed as the Board is not authorised to pass any order after lapse of three years stipulated period. Law in this regard has been settled by a Division Bench of this court in Anand Singh vs. U.P. Board of Secondary Education and others (2014)3 ADJ 443 (DB). Relevant part of the judgment in the case of Anand Singh is extracted below :*

*"The substantive part of Regulation 7 provides for the correction of such entries in the certificate which have arisen because of any inadvertent clerical mistake or omission in the records of the Board or the Institution last attended by the candidate. It also provides that for this purpose, the candidate has to submit an application within three years of the date of issue of the certificate. However, under the proviso, any spelling mistake occurring in the name of the applicant or in the name of the applicant's father/mother in the certificate can be corrected when an application is filed for this purpose. The nature of the error which is contemplated in the substantive part of Regulation 7 is not the same as contemplated in its proviso nor is any time limit set out in the proviso.*

*It would be useful to examine the particulars of the candidate that are contained in a certificate issued by the Board. They include the year of the examination, the name of the candidate, the names of the parents, date of birth, subjects opted, division obtained, name of the School/Centre, certificate number, appearance as a regular/private candidate and the date of issue of the certificate. Of these, the date of birth, the subjects opted, the year of examination and the division obtained by the candidate are particulars which have an important bearing when admission to higher classes or employment is sought by the candidate. While making any correction in the entries relating to these matters, the requirement of moving the application within three years has to be adhered to as any correction in regard to these entries would have an impact on the rights of other candidates when they seek admission to higher classes or employment. However, the other particulars contained in the certificate, like the name of the candidate or the names of the parents of the candidate are not that relevant and any correction made in regard to these particulars would have no impact on the admission or employment of other candidates. When so considered, we feel persuaded to hold that the time limit of three years prescribed in the substantive part of Regulation 7 for submission of an application for making correction in the certificate issued by the Board in regard to the name of the candidate or the names of the parents of the candidate should not be insisted upon, particularly when the Board itself has considered it appropriate to have no time limit under the proviso for making correction in regard to any spelling mistake in the name of the candidate or his parents. The applicant must, however, explain to the Board the reasons on the basis of which the application could not be submitted earlier and if it is found that the claim is bona fide and is otherwise justified, there is no reason to reject the application, as in the present case, merely on the ground of delay. Undoubtedly, the Board has to examine whether any genuine ground has been made out for correcting the name and it would be open to the Board to consider all the relevant materials pertaining to the request for correction of the name. "*

*5. A perusal of the aforesaid judgment shows that substantive part of Regulation 7 provides for the correction of such entries in the certificate which have arisen because of any inadvertent clerical mistake or omission in the records of the Board or the institution last attended by the candidate. It further provides that the candidate has to submit an application within three years of the date of issue of the certificate. In the proviso to Regulation 7, the nature of the error which is contemplated in the substantive part of Regulation 7 is not the same as contemplated in its proviso nor is any time limit set out in the proviso. No time limit of three years is prescribed in proviso of Regulation 7 for submission of application for making correction in the certificate issued by the Board in regard to the name of the candidate or their parents. However, while making any correction with regard to the date of birth, the requirement of moving application within prescribed period of three years was held to be mandatory as any correction in regard to these entries would have an impact on the rights of other candidates when they seek admission to higher classes or employment.*

*6. In the case in hand, admittedly, the application for correction of date of birth has been given beyond the period of three years, therefore, such application cannot be considered under substantive part of Regulation 7 of the Regulations framed under Intermediate Education Act, 2021.*

*7. The petition is devoid of merit and is accordingly dismissed."*

3. The learned counsel for the petitioner has submitted that the result of High School Examination, 2017 conducted by the U.P. Board was declared on 9.6.2017, in which his date of birth was recorded as 7.9.2001, however, his actual date of birth as recorded in the transfer certificate issued by Sri Guru Ram Rai Public School, Shahabad Road, Hardoi and Aadhar is 7.9.2003. The petitioner has received the mark sheet on 19.8.2017.

Initially, when the result of High School was declared, he submitted an application on 19.6.2017 and after receiving the mark-sheet from the College, he submitted another application dated 24.8.2017 praying for correction of his date of birth. The petitioner again submitted an application along with declaration on the prescribed format of the Board with an affidavit by parent, transfer certificate of Class-VII, issued by Shri Guru Ram Rai Public School, Shahabad, Hardoi to the Additional Secretary (Regional), U.P. Board, Prayagraj and other required documents on **26.12.2020** through Speed Post with a request to correct his date of

birth in the High School mark sheet.

4. The learned counsel for the petitioner has contended that while filing the writ petition before this Court, he had pleaded in the petition the effect of Covid-19, however, in specific terms, he could not plead before this Court that due to COVID-19, delay in moving the application, if any for correction in the date of birth be exempted in the light of the judgment in *Suo Motu Writ Petition (C) No.3 of 2020*. It is submitted that the delay in moving the application for correction be exempted in view of the judgment of Supreme Court referred to above.

5. Learned Additional Government Advocate has opposed the petition, however, he does not dispute the aforesaid facts.

6. I have considered the submission.

7. It is significant to note that the petitioner has submitted his application on 26.12.2020 to the Secretary, U.P. Education Board on prescribed proforma and the other required documents for correction of date of birth as recorded in his High School mark sheet. The result of the High School was declared on 9.6.2017 and the mark sheet was issued on 9.6.2017. Thus, as mentioned in the judgment under review, the application for correction of date of birth has been given beyond the period of three years and as such, such application cannot be considered under substantive part of Regulation 7 of the Regulations framed under the Intermediate Education Act, 2021 as quoted in the order dated 24.3.2023 above extracted. A copy of the mark sheet has been annexed with the main writ petition as Annexure No.4 which shows that the

said document has been issued by the Board on 9.6.2017.

8. The Supreme Court in the *Suo Motu Writ* petition (*supra*) has made certain directions while passing order dated 10.1.2022 and in para 5 (iv) thereof, it has been clarified that the period from 15.3.2020 till 28.2.2022 shall also stand excluded in computing the period prescribed under certain Acts as well as any other laws which prescribe period of limitation for instituting proceedings.

9. In the present case, a bare look of the certificate-cum-marks sheet of High School Examination-2017 of the petitioner depicts that the said certificate was issued by the Board on 9.6.2017. Thus, the petitioner was required to move appropriate application before expiry of period of three years i.e. before 8.6.2020, as provided in substantive part of Regulation 7 of the Regulations framed under Intermediate Education Act, 2021.

However, after giving the benefit of the direction given by the Supreme Court in para 5(iv) of the judgment and the period from 15.3.2020 till 28.2.2022 is excluded in computing the period prescribed under the Regulations (*supra*), he was well within his right to move the application for correction on 26.12.2020 and thus the present review petition is liable to be allowed.

10. The review petition is allowed. Accordingly, writ petition is also allowed. The Secretary/Addl. Secretary (Regional), Board of High School and Intermediate Education, U.P. Prayagraj is directed to issue within a period of one month from the date of receipt of a certified copy of this order a fresh **mark sheet and certificate** to the

petitioner with his correct date of birth as recorded in his educational record.

The petitioner shall furnish a certified copy of this order to the concerned authority, along with a fresh representation, annexing therewith the relevant papers in support of his claim.

**Order Date :-** 16.12.2023

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