

GAHC010127032024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : W.A. 7153 of 2024 (Filing Number)

MINAKSHI DAS
WIFE OF- KISHORE KUMAR BARMAN, RESIDENT OF - HOUSE NO. 58,
BONGAON ROAD (ANIL PHUKAN PATH), LAKSHMI MANDIR, GUWAHATI-
781028.

VERSUS

THE BOARD OF SECONDARY EDUCATION ASSAM AND 4 ORS.
BAMUNIMAIDAM, GUWAHATI- 781021, REPRESENTED BY THE
SECRETARY, BOARD OF SECONDARY EDUCATION, ASSAM.

2:THE SECRETARY
BOARD OF SECONDARY EDUCATION
ASSAM
BAMUNIMAIDAM
GUWAHATI- 781021.

3:THE CONTROLLER OF EXAMINATIONS
BOARD OF SECONDARY EDUCATION
ASSAM
BAMUNIMAIDAM
GUWAHATI- 781021.

4:THE MEDICAL SUPERINTENDENT (JT. DHS) AND REGISTRAR OF BIRTHS
AND DEATHS
GANESH DAS GOVERNMENT M AND CH HOSPITAL

SHILLONG
MEGHALAYA.

5:HEADMASTER

BENGALI GIRLS HIGHER SECONDARY SCHOOL
PALTAN BAZAR
GUWAHAT

Advocate for the Petitioner : MR. S BANIK, MS F BEGUM

Advocate for the Respondent : SC, SEBA,

Linked Case : **I.A.(Civil)/2126/2024**

MINAKSHI DAS

VERSUS

THE BOARD OF SECONDARY EDUCATION ASSAM AND 4 ORS A

Advocate for : MR. S BANIK
Advocate for : appearing for THE BOARD OF SECONDARY EDUCATION ASSAM
AND 4 ORS A

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

09-08-2024

(M.R.Pathak, J)

1) Heard Mr. S. Banik, learned counsel for the applicant/appellant. Also heard Mr. T. C. Chutia, learned Standing counsel for the Board of Secondary Education, Assam, assisted by Mr. D. K. Roy, learned counsel for the respondent Nos. 1 to 3.

- 2)** The appellant as petitioner filed a writ petition being WP(C) No. 2568/2023 (*Minakshi Das -Vs- Board of Secondary Education, Assam and 3 Others*) praying for a direction to the respondent authorities in the Board of Secondary Education, Assam(in short, SEBA), to make correction of her age as on the 1st of March 1980 so recorded in the Admit Card issued to her by SEBA vide No.171970 on the basis of original hospital document dated 03.07.1965 issued by Ganesh Das Hospital for Women and Children, Shillong and the certificate No.18(A)/MRD/GDH/VER(O)/17120 dated 08.11.2022 issued by the Medical Superintendent (Joint Director of Health Services) and Registrar of Births and Deaths, Ganesh Das Government Maternal and Child Health Hospital, Shillong.
- 3)** After hearing the parties, the Hon'ble Single Judge by order dated 06.05.2024 dismissed the said WP(C) No. 2568/2023 of the appellant.
- 4)** Aggrieved with said dismissal order dated 06.05.2024, the appellant has preferred this intra Court appeal. Before admitting this appeal and issuing notice to all the respondents, we decided to hear the appellant on the merit of the appeal.
- 5)** The appellant was admitted as a student in Bengali Girls' High School Gauhati, Assam in July, 1974. For her appearance in the Class-X High School Leaving Certificate Examination (HSLC), 1980 conducted by the SEBA, it issued an Admit Card to the appellant vide No. 171970 with Roll B 34 No. 2161, wherein her age as on 1st of March 1980 was recorded as 15 years 7 months 15 days. Considering the said Admit Card issued by SEBA, the date of birth of the appellant was 17th July, 1964.
- 6)** Appellant joined Government Service in the Forest Department of Assam on 03.02.1993 and she served as Senior Assistant in the Office of the Conservator of Forests, Research and Education Circle, Basistha, Assam. As per record maintained in her office, she was to retire from service on 31st July, 2024 on attaining the age of superannuation at the age of 60 years on the basis of her date of birth that was recorded on the basis of said Admit Card issued to her by SEBA.
- 7)** The appellant contended that her parents earlier resided at Shillong while it was a part of Assam and she was born in Shillong. After the death of her father Manodhir Das on 20.05.2020, while checking his personal belongings that were kept secured under his custody, the appellant

could lay her hands on a document dated 03.07.1965 issued by Ganesh Das Hospital for Women and Children, Shillong that a girl child was born to Krishna Das (her mother) on 24.06.1965 at 01:45 pm.

8) After the Pandemic COVID-19, the appellant approached the authorities of said Ganesh Das Hospital for Women & Children, Shillong, Meghalaya which in the meanwhile was renamed as Ganesh Das Government Maternal and Child Health Hospital, Shillong. After verification of its records, the Medical Superintendent (Joint Director of Health Services) and the Registrar of Births and Deaths of said Ganesh Das Govt. M&CH Hospital, Shillong vide No. 18(A)/MRD/GDH/VER(O)/17120 dated 08.11.2022 issued a certificate that Smti. Krishna Das, wife of Manodhir Das, resident of Lumdawrie gave birth to a female child on 24.06.1965 at 01:45 pm as per Birth Record Register maintained by the said Institution.

9) It is also contended by the appellant that prior to the demise of her father on 20.05.2020, she had no knowledge of her correct date of birth and all along she believed her date of birth as recorded in the Admit Card issued to her by SEBA and that there was also no occasion to harbour any doubt as to her date of birth being different from the date that was indicated in the said Admit Card.

10) The appellant further contended that though the Registration of Births and Deaths Act, 1969 came into force on 31.05.1969, but it came into effect for the whole State of Assam (undivided Assam) w.e.f. 01.04.1970 except the District of United Khasi and Jaintia Hills excluding the areas comprised within the limits of the Municipality of Shillong and the Cantonments of Shillong (at relevant point of time Shillong was part of Assam) and since she was admitted as a student in Bengali Girls' High School at Guwahati in July, 1974, the provisions of said 1969 Act became applicable to her. Appellant stated that considering her birth at Shillong as on 24.06.1965 or after 01.04.1970, the provisions of the said 1969 Act was not applicable to her.

11) On obtaining the said certificate dated 08.11.2022 from the Office of the Medical Superintendent (Jt.DHS), Ganesh Das Govt. M&CH Hospital, Shillong the appellant approached the Secretary of SEBA at Guwahati on 09.12.2022 by filing a representation dated 06.12.2022 requesting it for issuance of a correct HSLC Admit Card as well as Pass Certificate with corrected Date of Birth as 16.07.1966. Since the authorities in the SEBA did not act on her said representation correcting her date of birth in her HSLC Admit Card, 1980 and the Pass Certificate,

the appellant as petitioner filed the said writ petition WP(C) No. 2568/2023, wherein the respondents SEBA and the Medical Superintendent (Jt.DHS) and Registrar of Births and Deaths of Ganesh Das Govt. M&CH Hospital, Shillong filed their respective Affidavits-in-Oppositions.

12) The appellant contended that only after the death of her father Monodhir Das on 20.05.2020, she could lay her hands on the document dated 03.07.1965 of said GD Hospital for Women & Children, Shillong and on proper computation of her age, she found that the date of her retirement from service would be 31.07.2025 and that the principle of seeking correction of date of birth at the fag end of service career of a Government employee shall not be attributable to her since there was no such laches or negligence on her part to know the actual date of her birth prior to the death of her father on 20.05.2020.

13) In support of correction of her date of birth the appellant relied on the decision of the Hon'ble Supreme Court in the case of *Jigya Yadav -Vs- Central Board of Secondary Education*, reported in (2021) 7 SCC 535.

14) From the affidavit of respondent SEBA filed in said WP(C) No. 2568/2023(Enclosure-B to this appeal) it is seen that the Board contended before the Hon'ble Single Judge that it records the date of birth and age of a candidate in High School Leaving Certificate Examination documents on the basis of the statement of particulars submitted by the Head of the Institutions at the time of appearing such examination by the candidate concerned and that SEBA does not record particulars of a candidate from its own. SEBA stated that appellant's HSLC Examination, 1980 Admit Card with Roll B34 and No. 2161 specifying her age on it as 15 years 7 Months 15 Days as on 1st of March 1980 was issued as per the statement of particulars submitted at the time of filling up of Form for her HSLC Examination, 1980 by the Head of the Institution from which she appeared.

15) The respondent SEBA also submitted that the appellant after 42 years from the date of passing of HSLC Examination in the year 1980 approached it by filing the application for correction of her date of birth as 16.07.1966.

16) Respondent SEBA further submitted that as per its Regulation, once date of birth is reported by the Head of the Institution to the Board in the prescribed statement of a candidate and is entered in to the records of the Board, it will not be altered by SEBA except on the grounds of wrong calculation or clerical error and for such correction an application is required to be made

to the Board with the recommendation of the Head of the Institution through the Inspector of Schools concerned, who in turn on verifying the school records shall submit its report to the Board. Thereafter, if the Board is satisfied that there was error in the report of the date of birth of the candidate due to wrong calculation or clerical error then the Secretary of the Board may pass order(s) for correction in that regard. The SEBA further clarified that such an application for correction of date of birth of a candidate, as been recorded by the said Board, should be made before it within a period of three years from the date of examination of the concerned year, with payment of necessary fees.

17) It is urged by respondent SEBA that it did not commit any error or mistake in recording the date of birth of the appellant that was recorded on the basis of the statements of particulars of the candidate submitted by the Head of the Institution at the time of appearing in her HSLC Examination. Respondent SEBA stated that at the belated stage, that too after 42 (forty-two) years from the date of passing of her HSLC Examination in the year 1980, correction of date of birth of the appellant as on 16.07.1966 in her HSLC Admit Card 1980, as been claimed by her, cannot be considered. Respondent SEBA relied on the decision of the Hon'ble Supreme Court in the case of *Board of Secondary Education of Assam -Vs- Md. Sarifuz Zaman and others*, reported in (2003) 12 SCC 408.

18) We have also gone through the affidavit filed by the Medical Superintendent (Jt.DHS) and Registrar of Births & Deaths of Ganesh Das Govt. M&CH Hospital, Shillong, respondent No.4 in said WP(C) No. 2568/2023 (Enclosure-C to this appeal) wherein at Para-5 it stated that – “.....on request made by the petitioner vide letter dated 11th October 2022. The Birth Register bearing Register No.6 GD/MRD/RR-01 from 01.03.1964 to 31.12.1965 maintained by the office of the Medical Superintendent (Jt.DHS) and Registrar of Births and Deaths, Ganesh Das Govt. M&CH Hospital, Shillong, Meghalaya, it shows that the petitioner's parents names appear at serial number 849 dated 24.6.65 at 1.45 PM, resident of Lumdawrie and upon verification the answering respondent issued a certificate No. 18(A)/MRD/GDH/VER(O)/17120 dated 08.11.2022 to the petitioner”. But the said Annexure-B1 does not reflect that said Krishna Das was the wife of Manodhir Das and further, it does not contain any in-patient number or bed number, though said Annexure-B1 shows that Krishna Das was admitted in G D Hospital for Women and Children, Shillong on 23.06.1965 and was discharged on 03.07.1965.

19) We have considered the submissions of the parties and the judgments relied by them in their support.

20) It is not the case of the appellant that the respondent SEBA committed mistake in incorporating or recording her age as 15 years 7 months and 15 days as on 1st of March 1980 in her Admit Card issued by it when she appeared in the HSLC Examination, 1980 as a student of Bengali Girls' High School Gauhati, Assam, where the said HSLC Examination was conducted by SEBA.

21) Appellant's claim for correction of her age in the Admit Card issued by SEBA in the year 1980 is on the ground that after the death of her father Manodhir Das on 20.05.2020, she could lay her hands on a document dated 03.07.1965 issued by the G D Hospital for Women and Children, Shillong that a female child was born to one Krishna Das on 24.06.1965 at 01.45 pm (Annexure-B1 to this appeal) and a certificate No. 18(A)/MRD/ GDH/VER(O)/17120 dated 08.11.2022 was issued by the Medical Superintendent (Jt.DHS) and Registrar of Births & Deaths of Ganesh Das Govt. M&CH Hospital, Shillong stating that Smti. Krishna Das, wife of Manodhir Das, resident of Lummawrie gave birth to a female child on the 24.06.1965 at 01:45 pm as per Birth Record Register maintained by the said Institution (Annexure-A to this appeal).

22) The Medical Superintendent (Jt.DHS) and Registrar of Births & Deaths of Ganesh Das Govt. M&CH Hospital, Shillong, respondent No.4 filed an affidavit in WP(C) No. 2568/2023 (Enclosure-C to this appeal) wherein it at Para-5 stated that – *on the request made by the petitioner by letter dated 11th October 2020, the Birth Register bearing Register No.6 GD/MRD/RR-01 from 01.03.1964 to 31.12.1965 maintained by the office of the Medical Superintendent (Jt.DHS) and Registrar of Births and Deaths, Ganesh Das Govt. M&CH Hospital, Shillong, Meghalaya, it shows that the petitioner's parents names appear at serial number 849 data 24.6.65 at 1.45 PM, resident of Lummawrie and upon verification the answering respondent issued a certificate No. 18(A)/MRD/GDH/VER(O)/17120 dated 08.11.2022 to the petitioner. But the said Annexure-B1 does not reflect that said Krishna Das was the wife of Manodhir Das. Further, it does not contain any in-patient number or bed number of the Hospital concerned, though the Annexure-B1 shows that said Krishna Das was admitted in G D Hospital for Women and Children, Shillong on 23.06.1965 and was discharged on 03.07.1965.*

23) The appellant in her application/representation dated 06.12.2022 filed before the Secretary

of SEBA, Guwahati, that was received by SEBA on 09.12.2022 (Annexure-E to this appeal) requested before the said authority for issuance of a correct HSLC Admit Card as well as Pass Certificate stating that she received her admit card and pass certificate with her date of birth as 15-07-1964 and that her actual date of birth is 16-07-1966. In one hand, on the basis of a document of G D Hospital for Women and Children, Shillong dated 03.07.1965 and a certificate issued by the Medical Superintendent (Jt.DHS) and Registrar of Births & Deaths of Ganesh Das Govt. M&CH Hospital, Shillong, Meghalaya vide No. 18(A)/MRD/ GDH/VER(O)/17120 dated 08.11.2022 the appellant/petitioner claimed her date of birth as 24.06.1965 and on the other hand before respondent SEBA she stated her actual date of birth as 16-07-1966. We have seen that the appellant/petitioner failed to place anything in her writ petition or before the Hon'ble Single Judge for correction of her date of birth as 16-07-1966 by respondent SEBA.

24) From the Annexure-E to this appeal, the application filed by the appellant before the Secretary of SEBA dated 06th December 2022, stating that her actual date of birth is 16-07-1966 and prayed for issuance of corrected HSLC Admit Card as well as Pass Certificate in her favour, it can be seen that she had only attached photocopy of school admission register record (of Bengali Girls High School, Guwahati), admit card and pass certificate (issued by SEBA in the year 1980) along with her said application before the said authority.

25) We therefore, found that the Hon'ble single Judge by its Judgment & Order dated 06.05.2024 passed in WP(C) No. 2568/2023 correctly held that there was no public document before SEBA for correction of the date of birth of the appellant as "16-07-1966" as been prayed by her in her application dated 06th December 2022 submitted before SEBA. The Hon'ble single Judge also correctly came to the finding that the decision of the Hon'ble Supreme Court in the case of *Jigya Yadav* (supra) would not advance the case of the appellant to correct her date of birth as "16-07-1966" in the absence of any public document.

26) While deciding the issue relating to an application for correction of any entry moved beyond three years from the date of issuance of certificate by SEBA is not liable to be entertained by it as provided under Regulation 8 of the Regulations for Conduct of Examinations by SEBA, where the said Regulation has been framed under the provisions of the Assam Secondary Education Act, 1961, the Hon'ble Supreme Court in the case of *Board of Secondary Education of Assam -Vs- Md. Sarifuz Zaman* (supra) have held that the said provision of the Regulations of SEBA is neither

illegal nor beyond the purview of Section 24 of the Assam Secondary Education Act, 1961 and the said provision cannot be called arbitrary or unreasonable as such prescription has a reasonable nexus with the purpose sought to be achieved. In the said decision the Hon'ble Supreme Court also observed that with the said provision of the Regulations of SEBA, no fault can be found on the anvil of Article 14 of the Constitution.

27) Relying on the decision of the Hon'ble Supreme Court in the case of *Board of Secondary Education of Assam -Vs- Md. Sarifuz Zaman* (supra), this Court in the case of *Mohit Chandra Saikia -Vs- State of Assam & Others*, reported in (2004) 3 GLR 28 have held that – *if on scrutiny the Board of Secondary Education, Assam come to the conclusion that the petitioner therein had not submitted any application for correction of the date of birth within the stipulated time, the Board will not be under no obligation to take any steps to make correction in the date of birth of the petitioner.*

28) In the case of *Jogeshwar Baruah -Vs- State of Assam & Others*, reported in (2016) 3 GLR 812 = (2016) 4 GLJ 5, a Co-ordinate Bench of this Court have observed that – *Rule 8 (C) of the Fundamental Rules and Subsidiary Rules, provides that request for correction of date of birth should not be entertained within 3 (three) years of superannuation.*

29) Though the appellant before the honourable single Judge and before us submitted that she does not intend to take any benefit of change of her date of birth in connection with her service or to obtain any service benefit, the same cannot be considered as the correction of date of birth of the appellant petitioner is not only at the fag end of her service career, just before her superannuation from service on attaining the age of 60 years, but also such plea of correction of her date of birth as "16-07-1966" is in the absence of any public document. It is also submitted that the petitioner has already superannuated from service on 31.07.2024.

30) Considering the entire aspect of the matter and for the reasons above, we do not find any good ground to interfere with the impugned Judgment and Order dated 06.05.2024 passed by the Hon'ble Single Judge in WP(C) No. 2568/2023 dismissing the said writ petition preferred by the appellant as petitioner

31) Accordingly, this appeal, being devoid of merit, stands dismissed.

32) Registry shall however, register and number this appeal as we have condoned the delay by

a separate order passed today in the connected I.A.(C). No. 216/2024.

JUDGE

JUDGE

Comparing Assistant