

Neutral Citation No. - 2024:AHC-LKO:34387

AFR

Court No. - 20

Case :- WRIT - C No. - 219 of 2024

Petitioner :- Divyanshu

Respondent :- State Of U.P. Thru. Prin. Secy., Madhyamik Education, Deptt., Lucknow And Others

Counsel for Petitioner :- Rajeev Kumar Dwivedi, Rama Raman Mishra
Counsel for Respondent :- C.S.C.

Hon'ble Shree Prakash Singh, J.

1. Heard learned counsel for the petitioner and Mr. Shailendra Kumar Singh, learned Chief Standing Counsel and Mr. Pankaj Patel and Mr. Vivek Shukla, learned Additional Chief Standing Counsels for the State.
2. Since a legal question is involved to be adjudicated, therefore, notice to opposite party no.5 is hereby dispensed with.
3. By means of the instant petition, the petitioner has assailed the order dated 30.9.2023 passed by the opposite party no.3, i.e., Regional Secretary, Madhyamik Shiksha Parshad, Varanasi (hereinafter referred to as 'Board') whereby the claim of the petitioner with respect to correction of date of birth of the petitioner in the mark sheet-cum-certificate is rejected.
4. Brief factual matrix of the case is that on 3.9.2005, petitioner took admission in the institution, namely, Patiraji Montessori School, Badhupur, Pratappur Kamaicha and he remained over there till class Vth, whereafter school leaving certificate was issued in which date of birth of the petitioner is mentioned as 30.9.2005. After completion of class VIIIth standard, the petitioner took admission in High School at J.B.I.C., Mathura Nagar, Ramgarh, Sultanpur, and he has submitted his school leaving certificate of class VIII, wherein also, his date of birth is mentioned as 30.9.2005 and further in class IXth, at the time of pre-

registration, the date of birth of the petitioner is mentioned as 30.9.2005. Further after passing of class IXth, the petitioner took admission in class Xth and also passed the examination with role number 1813634 in the year 2022 but once he received the mark sheet-cum-certificate, he found that his date of birth is wrongly mentioned as 30.5.2005, in place of 30.9.2005. Being aggrieved, he moved an application before the Regional Secretary of the Board, who passed the order on 30.9.2023, thereby rejecting the request of the petitioner for correcting date of birth in the mark-sheet -cum- certificate of class Xth.

5. Contention of the learned counsel for the petitioner is that the petitioner from very inception of his admission, mentioned the date of birth as 30.9.2005, which is evident not only from the school leaving certificate, but, that too, from the pre-registration for class IXth. He submits that there is no fault on the part of the petitioner so as to incorrectness in the date of birth mentioned in the mark sheet-cum-certificate of High School standard and as soon this came into his knowledge, he objected the same with a request to the Secretary Board to correct it, but the same was rejected on the wrong premise that the application is made after passing of three years which is impermissible as per the Regulation 7 of the Regulations made under the UP intermediate Education Act, 1921 (hereinafter referred to as 'Regulation').

6. Regulation 7 is extracted as under:-

"विनियम-7

सचिव परिषद की ओर से सफल उम्मीदवारों को परिषद की परीक्षा में उत्तीर्ण होने का प्रमाण पत्र विहित प्रपत्र में देगा और बाद में उसकी प्रविष्टियों में कोई शुद्धि करेगा, बशर्ते कि प्रमाण पत्र में किसी ऐसी गलत प्रविष्टि किसी अविचारित लिपिकीय भूल या लोप के कारण या किसी ऐसी लिपिकीय भूल के कारण की गयी हो, जो असावधानी से परिषद के स्तर के या उस संस्था के, जहां से अन्तिम बार शिक्षा प्राप्त की हो, स्तर पर अभिलेख में हो गयी हो।

यह शुद्धि सचिव द्वारा उसी स्थिति में की जा सकेगी जबकि अभ्यर्थी ने संबंधित परीक्षा के प्रमाण पत्र को परिषद द्वारा निर्गमन की तिथि से तीन वर्ष के अन्दर ही लिपिकीय त्रुटि की ओर ध्यान आकृष्ट करते हुए संबंधित प्रधानाचार्य/अग्रसारण अधिकारी को त्रुटि के संशोधन हेतु प्रार्थना पत्र प्रस्तुत कर दिया हो और उसकी प्रति पंजीकृत डाक से सचिव परिषद को भी प्रेषित की हो।

प्रतिबंध यह है कि अभ्यर्थी के अंक पत्र तथा प्रमाण पत्र में अभ्यर्थी के नाम पिता के नाम अथवा माता का नाम में यदि कोई वर्तनी त्रुटि है तो अभ्यर्थियों द्वारा यथासमय आवेदन करने पर उसे परिषद के संबंधित क्षेत्रीय कार्यालय के क्षेत्रीय सचिवों द्वारा प्रमाणित साक्ष्यों के आधार पर तत्काल शुद्ध कर दिया जायेगा।"

7. He argued that from bare reading of Regulation 7, it is evident that the same prescribes the provision regarding the correction in the entries of the certificate issued by the Board in case of any clerical mistake or omission, which has occurred on the part of the Board. So for the present matter is concerned, the submission is that here entries were rightly done in the records by the petitioner, but it is the fault on the part of the Board and, therefore, the Board is under an obligation to correct the same. He also added that while passing the impugned order dated 30.9.2023, the Board has not taken care of that so far as the incorrectness in the certificate is concerned, that was not intimated by the Board, and later on, when it came into knowledge of the petitioner, he, at once, written a letter to the Secretary Board for correction of the same.

8. Further contended that the date of issue of the certificate, is 27.6.2020 and the petitioner moved the application on 10.9.2022, that too, within the time prescribed under Regulation 7, though, subsequently, the petitioner moved an application on 5.9.2023, and the order dated 30.9.2023 has been passed considering petitioner's application dated 5.9.2023, ignoring the earlier application of the petitioner dated 10.9.2022, and thus, the observation of the Secretary Board is

inconsistent to the fact which he himself has mentioned in the order dated 30.9.2023.

9. In support of his contentions, learned counsel for the petitioner has placed reliance on the judgement reported in **2015 (8) ADJ 693, Akash Sharma Vs. State of U.P.** and has referred paragraph 16 and 18 of the said judgement, which are quoted as under:-

"16. 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 v. 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 bona fide delay may not by itself be treated as sufficient to debar the remedy particularly where the record ex facie shows miscarriage of justice.

18. 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."

10. Referring the aforesaid, he submits that the co-ordinate Bench of this Court, while opting the ratio of the judgement in the case of N. Balakrishnan Vs. M. Krishnamurthy, (1998) 7 SCC 123, has held that bona fide delay may not by itself be treated to be sufficient to debar the remedy, particularly where the record ex-facie shows miscarriage of justice. He further submits that so far as the present matter is concerned

application of the present petitioner has been rejected outrightly ignoring the settled proposition of law and without application of mind on the issue that whether the delay which occurred is on the part of the petitioner or the Board itself.

11. He has further placed reliance on the judgement of the Division Bench of this Court in **Special Appeal No.1202 of 2010 Babu Ram Vs. State of UP and another** and has referred para 4 of the above said judgement, which is quoted as under:-

"4. IN the petition filed by the appellant, that plea was also taken before the learned single Judge. However, the learned Judge held that as the application was filed beyond the time and was not maintainable, and that the appellant herein may file a civil suit for declaration of his Date of Birth.

In the instant case, we find that Regulation 7, referred to above, refers to correction in the certificate of passing. There is no mistake in the certificate of passing. The mistake is in the records maintained by the Board. Therefore, the said Regulation would not be applicable so far as the case of the appellant is concerned. Once the respondents themselves had issued the certificate showing the Date of Birth of the appellant as 1st September, 1949, the respondent No.2 was bound to correct the clerical mistake in the record of the Board."

12. Drawing attention the above-said Judgment, he submits that considering the Regulation 7, the Court has held that the records are maintained by the Board, therefore, if there is any incorrectness in the record of the Board, that is the fault on the part of the Board and the student cannot be thrown to suffer so as to any fault done by the Board.

13. Concluding his arguments, he submits that since the petitioner from very beginning has transcribed/intimated his date of birth as 30.9.2005, therefore, he is not at fault and further he has also moved an application on 1.9.2022, i.e., within three years, prescribed in the Regulation and, therefore, submission is that the order dated 30.9.2023 is unsustainable and the same may be quashed and further the authorities may be directed to re-consider the matter with respect to correction of date of birth of the petitioner in the record.

14. Refuting the aforesaid contentions of the learned counsel for the petitioner, the counsel appearing for the State submits that it is evident from the record that the High School certificate-cum- mark-sheet is issued to the petitioner on 27.6.2020, and therefore, as per the provision of Regulation 7, the application for correction is admissible upto 26.6.2023 but the petitioner has sent the application on 5.9.2023, and, therefore, the same was rejected. He further added that in fact, the law position, which has been referred by the counsel for the petitioner, is not applicable in the case of the petitioner as the petitioner has sought correction in the mark-sheet and not in the record of the Board and further correction is particularly with respect to the date of birth, which is not permissible as per the mandate of the Regulation 7.

15. In support of his contention, he has placed reliance on a judgement reported in **(2014) 2 UPLBEC 1330, Anand Singh Vs. U.P. Board of Secondary Education and others**, and referred paras 6 to 8, which are extracted as under:-

"6. 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.

7. In the circumstances, we are of the view that the impugned order of the first respondent, rejecting the application submitted by the the a appellant for correction of the name of his mother in the High School and Intermediate examinations only on the ground of delay, is unsustainable. We, accordingly, direct the first respondent to re-consider the application having due regard to all the documentary evidence which may be produced by the appellant. The first respondent would also be at liberty to summon all the relevant records from the concerned Institution for the purpose of deciding the application of the appellant. We clarify that the interpretation which we have laced in the aforesaid terms governs only the mistakes in the certificate in the name of the candidate or in the names of his parents. The first respondent shall now pass a fresh order in accordance with law within a period of four months from the date of receipt of a certified copy of this order. In order to facilitate this exercise, the impugned order dated 11.10.2013 is set aside. The order of the learned Single Judge shall, in consequence, be set aside and be substituted by the aforesaid directions.

8. The appeal is, accordingly, allowed to the extent indicated above. There shall be no order as to costs."

16. Referring the aforesaid, he submits that Hon'ble Division Bench has held that so far as the correction in the date of birth of student in mark-sheet cum certificate is concerned that is permissible within a period of three years as prescribed under the Regulation 7 and, therefore, any application after the period prescribed is not entertainable and, thus, the Secretary Board has rightly passed the order on 30.9.2023, while rejecting the claim of the petitioner with respect to the correction in the mark-sheet-cum-certificate.

17. Considering upon the submissions of the learned counsel for the parties, and after perusal of the material placed on record, it transpires that the controversy arose when the petitioner made an application before the Secretary Board, on 5.9.2023 and that was rejected, vide order dated 30.9.2023, while observing that the application is preferred after the prescribed period of time and is not permissible.

18. Sheet anchor of the arguments of the learned counsel for the petitioner is that there is no fault on the part of the petitioner as the petitioner has sent letter on 1.9.2022 and, subsequently, on 5.9.2023, then it was incumbent upon the Board to take a decision, but the petitioner has failed to demonstrate that what is the mode of sending the application dated 1.9.2022? whereas, the subsequent application dated 5.9.2023 was sent through the registered post, as per the procedure prescribed under the Regulation 7 and, therefore, it seems that the Secretary Board has rightly taken the decision while considering the application dated 5.9.2023.

19. The second question which engaged the attention of this Court is that whether as per the nature of the correction, which involves in the present matter, can be done after the limitation period of three years prescribed under the Regulation 7, is over. The fact remains that the application was sent on 5.9.2023 as per the prescribed procedure and the mark-sheet was issued on 27.6.2020 and, therefore, undisputedly, the application was sent after passing of the prescribed period of three years, which could not have been allowed, as per provisions of Regulation 7.

20. The identical controversy has already been settled in the case of **Anand Singh Vs. U.P. Board of Secondary Education and two others, 2014 (3) ADJ 443**, while holding that the date of birth, the subjects opted, year of examination and the division obtained by the candidate are particulars, which have an important bearing, when admission to the higher classes or employment is sought by the candidate and, therefore, the correction in the above said, are not permissible, if it is sought after

the period of three years as prescribed under the Regulation 7. Further, the correction in the name of the mother and father regarding spelling, can be allowed after the period of three years. In this view of the matter, so far as the present case is concerned, undisputedly, the application for correction is made after the period of three years in the date of birth of the petitioner and, therefore, the same is not permissible under the law.

21. Having at glance the judgement and order passed in Special Appeal No.1202 of 2010, wherein it has been held that the correction in the record of the Board is permissible after the period of three years as prescribed in the proviso of the Regulation 7, but so far proviso of Regulation 7 is concerned that does not contemplate the provision of limitation and undisputedly the petitioner is not seeking the benefit of the proviso of regulation 7, therefore, the case of the present petitioner is different than the case which has been decided by the Division Bench as, here, the correction is sought with respect to the date of birth in the mark-sheet-cum-certificate and, therefore, the law settled in case of Special Appeal No.1202 of 2010 would not be attracted in the present matter.

22. This Court finds that there is reasonable restriction of limitation period of three years for moving an application for correction of the date of birth in the mark-sheet-cum-certificate before the Board and this has been clarified finally in the judgement and order in Anand Singh's case, therefore, the petitioner is not entitled for any relief.

23. It is trite law that if a statute provides a thing to be done in a particular manner, then it has to be done in that manner and not otherwise as this has been settled by the Apex Court in the case of Chandra Kishore Jha Vs. Mahavit Prasad & others, (1999) 8 SCC 266 and in the case of Cherukuri Mani Vs. Chief Secretary, Government of Andhra Pradesh & others, (2015) 13 SCC 722. Therefore, the time period prescribed in the Regulation 7 cannot be ignored.

24. In view of the aforesaid submissions and discussions, this Court is of the considered opinion that the writ petition is devoid of merits, hence, **dismissed.**

25. No order as to costs.

Order Date:-1.5.2024

Ram Murti