

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 23284 of 2012 (I)

PETITIONER(S):

JAYADEV B. DIVAKAR, AGED 24 YEARS,
SHIVALIK, MANGATTIRI P.O., THALAKKAD,
MALAPPURAM DISTRICT-676 105.

BY ADV. SRI.D.KISHORE

RESPONDENTS:

1. THE REGIONAL OFFICER,
CENTRAL BOARD OF SECONDARY EDUCATION,
NO.3, J BLOCK, 16TH MAIN ROAD,
ANNA NAGAR (WEST), CHENNAI-600 040.

2. THE PRINCIPAL,
JAWAHAR NAVODAYA VIDHYALAYA, OORAKAM,
MALAPPURAM DISTRICT-676 519.

3. THE SECRETARY AND REGISTRAR OF
BIRTHS & DEATHS,
VALANCHERRY GRAMA PANCHAYATH,
MALAPPURAM DISTRICT-676 554.

R1 BY SRI.DEVAN RAMACHANDRAN

R2 BY ADV. SRI.P.PARAMESWARAN NAIR,
SC, NAVODHAYA VIDHYALAYA SAMITI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 19-11-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C) NO.23284 OF 2012

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 - TRUE COPY OF THE PASS CERTIFICATE ISSUED BY THE CBSE DATED 26/5/2004.

EXT.P2 - TRUE COPY OF THE MARK SHEET ISSUED BY THE CBSE DATED 25/5/2004.

EXT.P3 - TRUE COPY OF THE BIRTH CERTIFICATE OF THE PETITIONER ISSUED BY THE 3RD RESPONDENT.

EXT.P4 - TRUE COPY OF THE RELEVANT PORTION OF THE BYELAWS.

EXT.P5 - TRUE COY OF THE JUDGMENT DATED 9/3/2010 IN WP(C) NO.4494/10 OF THIS HONOURABLE COURT.

EXT.P6 - TRUE COPY OF THE JUDGMENT DATED 8/7/2010 IN WP (C) NO.20167/10 OF THIS HONOURABLE COURT.

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P.S. to Judge

K. HARILAL, J.

W.P. (C) No. 23284 of 2012-I

Dated this the 19th day of November, 2015

JUDGMENT

The petitioner has completed his Secondary School Education at Jawahar Navodaya Vidyalaya affiliated to the Central Board of Secondary Education (CBSE) in the year 2004 and Ext.P1 Pass Certificate has been issued by the CBSE. The grievance of the petitioner is that, his actual date of birth is '27/12/1988' and the same is evidenced by Ext.P3 ; however, in Exts.P1 and P2, the date of birth of the petitioner is shown as '27/5/1989' and this is a mistake only. It was so happened when the application for admission was filed, the date of birth of the petitioner was wrongly mentioned as '27/5/1989' instead of '27/12/1988'. Aggrieved by the wrong entry in Exts.P1

and P2, the petitioner approached the 2nd respondent and submitted an application for correction of his date of birth. However, the 2nd respondent refused to entertain the said application on the ground that the period stipulated for effecting correction has expired. According to the 2nd respondent, as per the bye-laws of the 1st respondent, an application for correction of the date of birth has to be submitted within two years from the date of completion of Class X examination. The above reasoning given by the 2nd respondent is based on Clause 69.2(iv) of the Examination Bye-laws of the Board, which is evidenced by Ext.P4. The petitioner is, thus, aggrieved by the rejection of his application on the reason that the application is barred by limitation prescribed in Clause 69.2(iv) of the Examination Bye-laws of the Board.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the 1st respondent.

3. The learned counsel for the petitioner

advanced arguments contending that the rejection of the application on the ground that the application is barred by the period of limitation prescribed in Clause 69.2(iv) of the Examination Bye-laws of the Board, is illegal, arbitrary and unjust. The learned counsel for the petitioner further submits that on a reference, the Division Bench of this Court in W.P.(C)No.1362/15 had considered the question whether the application for correction of date of birth can be rejected under the bar of limitation prescribed in Clause 69.2(iv) of the Examination Bye-laws of the Board and held that the delay can be condoned, notwithstanding the period of limitation prescribed in the Bye-laws of CBSE, considering the facts and circumstances of each case.

4. Per contra, the learned counsel for the 1st respondent advanced arguments to justify the rejection of the petitioner's application under Clause 69.2(iv) of the Examination Bye-laws of the Board.

5. Going by the decision laid down by the Division Bench of this Court in W.P.(C)No.1362/2015 and

connected cases, this Court held as follows :

“35. Therefore, we have to proceed on the basis that the bye law of CBSE cannot be applied to the fact situation. But to reconcile the date of birth entry in the mark sheet with that of the entry in the statutory certificate, the candidates should not be left without any remedy. Their right to approach the Court for redressing their grievance cannot be ruled out.”

That apart in the above decision, this Court held that reason and circumstance under which mistake happened in the date of birth may be different and distinct. So, correction can be made, considering the facts and circumstances, which caused the mistake, or error, in the date of birth shown in the CBSE certificate notwithstanding the delay.

6. In the instant case, the date of birth of the petitioner is 27.12.1988, which is evidenced by Ext.P3 Birth certificate of the petitioner. But in the application for admission to School, by mistake it was shown as 27.5.1989. There is no reason or any circumstance

which would give rise to an inference that the false entry was deliberately made in the application for admission to the school to achieve any unlawful gain or purpose. In the absence of such materials, I am inclined to allow this writ petition.

7. The 2nd respondent is directed to accept the application of the petitioner for correction of his date of birth and forward the same to the 1st respondent and on receipt of application, the 1st respondent shall correct the date of birth of the petitioner in Exts.P1 and P2 in accordance with Ext.P3 Birth certificate, if the request is found to be genuine, within a period of 2 months from the date of receipt of application, notwithstanding the period of delay.

This writ petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge