

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.9161 of 2015

Date of decision: 28.10.2015

Rajiv Sharma

...Petitioner

Versus

Central Board of Secondary Education and others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Ms. Vandana Sharma, Advocate for the petitioner.

Mr. Harsh Aggarwal, Advocate for respondents No.1 and 4.

Mr. Deepak Manchanda,. Advocate for respondent no.3.

G.S.SANDHAWALIA, J, (Oral)

The petitioner seeks a writ in the nature of mandamus directing respondent no.1 to change the date of birth of the petitioner from 29.07.1991 to 29.7.1990 in the 10th class marks statement dated 27.5.2006 (Annexure P/2) and certificate of even date (Annexure P/3).

The correction is sought on the basis of the birth certificate issued by the Sub Registrar, Births and Deaths, Pehowa (Kurukshetra) in which the petitioner's birth is depicted as 29.7.1990 (Annexure P/1). The said relief is denied by the respondent-Board on account of the fact that the disputed questions of fact are involved and the same can be adjudicated upon by leading evidence. The additional ground taken is that there is delay and laches since the petition has been filed in May, 2015 after 9 years and in view of by-laws 69.2 of the Central Board of Secondary Examination, no change of date of birth is admissible as the petitioner attained majority on 29.7.2008 as per his own date of birth. Reliance has been placed upon the Division Bench judgment of this Court in **Ambika Kaul Vs. Central Board of Secondary Education and others 2015(2) Law Herald (Punjab and Haryana) 2181**. It has been pleaded that date of birth mentioned in the list of candidates sent by the school has been shown in the certificates (Annexures P/2 and P/3) and there is no mistake.

The petitioner has filed replication to controvert the averments

made in the written statement and averred that respondent no.2-school had sent speed post vide dairy no. PHE/CRF/437 dated 9.9.2010 (Annexure P/8) to respondent no.1-Board requesting for change of date of birth of the petitioner and the correction had been made in the school record and therefore, the judgment of the Division Bench in **Ambika Kaul's case** (supra) could not stand in the way.

This Court is of the opinion that the prayer sought is justified keeping in view the presumptive value of the certificate issued by the Registrar, Births and deaths, Pehowa. In the said certificate, the date of birth of the petitioner is mentioned as 29.7.1990 and the registration date of birth was 10.8.1990 which is within 15 days of the birth of the petitioner. The father's and mother's names are the same as have been incorporated in the All India Secondary School Examination certificates issued by respondent no.1-Board. The presumptive value of the certificate issued by the Registrar, Births and Deaths, Pehowa cannot be discounted. The Apex Court in **Narinder Kaur Vs. Punjab and Haryana High Court and others 2011(2) RSJ 500** has held to the same effect that an employee is entitled to correction as per the record maintained by the local Registrar of Births and Deaths. The hitch against the petitioner of delay and laches has also been successfully crossed on account of the document dated 9.9.2010 (Annexure P/8) whereby the School has written at that point of time to the Board requesting for the change in the date of birth of the petitioner.

The Division Bench itself in **Ambika Kaul's case** (supra) had created exception to the minors while discussing Clause 69.2 and they have been given a right to seek correction within three years of attaining the majority on the basis of date of birth mentioned in the birth certificate. Thus, it is apparent that the petitioner had started agitating his legal rights within specified time and therefore bar of limitation will not stand in his way. Relevant observations read as under:-

“38 On the basis of the judgments referred to above, it can be safely concluded that entry from the office of the Registrar Births and Deaths carries a presumption of correctness being maintained by a public office in discharge of the official duties. But even though the date of birth is recorded differently in the certificate of birth than in the matriculation certificate, the rule of estoppel will apply. No person will be entitled to dispute the same under the guise to correct the mistake in the entry of date of birth in the matriculation certificate. He has taken admission in the

school on the basis of a given date of birth and qualified the same. It will be unreasonable to infer that the candidate or his parents, who admitted the child to the school, were not aware of the correct date of birth. The rule of estoppel debars the candidate or a person to dispute the date of birth given in the matriculation certificate if it is not in sync with the certificate issued by the Registrar of Births & Deaths.

39. The correction contemplated to be carried under By-law 69.2 is in respect of the clerical mistake. Clerical mistake is not an entry of actual date of birth. Clerical mistake is that while recording the date of birth, by mistake, some digit of date of birth was wrongly recorded by oversight or inadvertently. It is only the correction of clerical mistake not requiring any intrinsic evidence to support such mistake, which is permissible under the said by-laws. Therefore, by-law 69.2 does not authorize any person to seek correction of date of birth as mentioned in the registers of births and deaths.

40 The other question which may arise is that the date of birth was given in the school records by the parents of a child when he was minor, therefore a minor on attaining the date of majority can dispute the date of birth given in the matriculation certificate.

41 [Section 6](#) of the Limitation Act, gives a right to the person suffering from legal disabilities including a minor to assert his rights after the cessation of such disability. The right to seek correction in the actual date of birth on the basis of certificate issued by the Register, Births and Deaths, is not free from doubt after long years on the basis of rule of estoppel, but for the purposes of the present appeals, we will assume that a person has a legal right to seek correction of his date of birth on attaining the majority.

42. The fact is that every person grows with the date of birth as mentioned in the matriculation certificate. He is aware of such date of birth. Giving allowance of minority will lead to uncertainties and inconsistencies in the records of public authorities. Therefore, though a person is estopped to dispute the date of birth entry recorded in the matriculation certificate, but even if he approaches the Civil Court to seek exclusion of the minority period in terms of [Section 6](#) of the Limitation Act, 1963, such suit cannot be entertained after three years from his alleged date of attaining the age of majority. In no case, the date of birth recorded in the matriculation certificate should be corrected after three years of attaining majority on the basis of date of birth in the birth certificate.”

Accordingly, the present writ petition is allowed. The respondent-Board is directed to make necessary correction in the date of birth of the petitioner to 29.7.1990 in the certificates (Annexures P/2 and P/3) issued by the Board on return of the original certificates by the petitioner within a period of three months from the date of receipt of a certified copy of this order.

October 28, 2015

Pka

(G.S.SANDHAWALIA)

Judge