

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 21, 2015

(1) LPA No. 1613 of 2014 (O&M)

Ambika Kaul

.....Appellant

Versus

Central Board of Secondary Education and others

....Respondents

Present: S/Shri R.K. Saini and U.K. Agnihotri, Advocates for the
appellant.

Shri Nitin K. Setia, Advocate, for

Shri S.K. Galhotra, Advocate, for respondent Nos. 1 & 2.

(2) LPA No. 373 of 2015 (O&M)

Shubham Attri

.....Appellant

Versus

Central Board of Secondary Education & Others.

.....Respondents

Present: Shri Balbir Singh Sewak, Advocate, for appellant.

Shri Harsh Aggarwal, Advocate for the respondents.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

- i) Whether Reporters of local papers may be allowed to see the judgment?
- ii) To be referred to the Reporters or not?
- iii) Whether the judgment should be reported in the Digest?

Hemant Gupta, J.

[1] This order shall dispose of the above mentioned two Letters
Patent Appeals preferred under Clause X of the Letters Patent against

the order dated 22.12.2014 in CWP No. 25561 of 2014, which is subject matter of Letters Patent Appeal No. 373 of 2015 and the order dated 4.8.2014 passed by the learned Single Bench of this Court in CWP No. 15315 of 2014, which is subject matter of LPA No. 1613 of 2014.

[2] Since the issue raised is purely legal, the facts of each case shall be dealt with later at the appropriate stage. However, the claim of the writ petitioners is for correction of date of birth on the basis of the entry in the Register maintained by the Registrar of Births and Deaths, though in the certificate issued by the Central Board of Secondary Education, the date of birth mentioned is at variance with the date of birth available in the records of the Registrar of Births and Deaths. The requests of the petitioners for correction of date of birth remained unsuccessful before the learned Single Bench holding that there is no scope of changing date of birth once it is recorded in the school records. The learned Single Bench did not agree with the view expressed by another Single Bench in Parveen Malik v. Central Board of Secondary Education and others, CWP No. 4767 of 2012 decided on 5.2.2013, but followed his own judgment in Ambika Kaul v. CBSE and others, (CWP No. 15315 of 2014) subject matter of LPA No. 1613 of 2014. Since the issue is important and arising quite frequently before this Court, we have examined the issue in detail with the assistance of the learned counsel for the parties.

[3] In the pre-independent India, the Births, Deaths and Marriages Registration Act, 1886, was in force, but such Statute had a restrictive applicability i.e. in terms of Section 11 of the said Act, such Act was applicable to the members of every race, sect or tribe to which the Indian Succession Act, 1865 (10 of 1865) applies and in respect of

which an order under Section 332 of that Act is not for the time being in force and all persons professing the Christian religion. Thus, the applicability of the Act was limited and not to all citizens of this country. *De-hors* the said statute, certain Municipalities and the Panchayats within the jurisdiction of this Court were keeping records of births and deaths as well.

[4] The Registration of Births and Deaths Act, 1969 (for short “the Act”) was enacted in the year 1969 with an object to have adequate and accurate country wide data for registration of births and deaths in the country for the purposes of national planning, organizing public health and medical activities and developing family planning programmes. Section 8 of the Act mandates to give information regarding births and deaths in all conceivable situations including hospitals, health centers, maternity or nursing homes or other like institutions, jails, hostels, dharmasalas, boarding houses, lodging houses or place of public resort or even in respect of any new born baby or dead body found deserted in a public place. Such information is required to be entered into the register. Under the Act, there is a duty upon the authority concerned, to notify the births and deaths and to certify the cause of death. The registers of births and deaths so maintained are open to public inspection. Section 23 of the Act, provides for penalties in case any person who fails without reasonable cause to give any information which it is his duty to give under any of the provisions of Sections 8 and 9 or gives or causes to be given, for the purpose of being inserted in any register of births and deaths, any information which he knows or believes to be false regarding any of the particulars required to be known and registered or refuses to write his name, description and place of abode or to put his thumb mark in the register as required by Section 11 of the Act. The failure to give

any information regarding births and deaths renders the person responsible for giving such information liable to penal consequences. Thus the information of births and deaths is mandatory requirement to be given and entered in the registers meant for the purpose.

[5] The Central Board of Secondary Education, the biggest school education board in India prescribes the procedure for admission and the documents required for admission in respect of age. The relevant extract read as under:-

“6. Admission: General Conditions:

6.1 A student seeking admission to any class in a 'School' will be eligible for admission to that Class only if he:

(i) has been studying in a School recognised by or affiliated to this Board or any other recognised Board of Secondary Education in India;

(ii) has passed qualifying or equivalent qualifying examination making him eligible for admission to that Class;

(iii) satisfies the requirements of age limits (minimum and maximum) as determined by the State/U. T. Government and applicable to the place where the School is located;

(iv) Produces:

(a) The School Leaving Certificate/Transfer Certificate signed by the Head of the Institution last attended and countersigned, if required as provided elsewhere, in these Byelaws;

(b) Document(s) in support of his having passed the qualifying or equivalent qualifying examination; and

*(c) Date of Birth Certificate issued by the Registrar of Birth and Deaths, where-ever existing, as proof of date of birth.”

65. Date of Birth Certificate

(i) The Date of Birth of the Candidate as admitted in the records of the Board shall be indicated in the pass certificate issued to the candidate at Secondary School level only.

(ii) A candidate can obtain from the Board a Date of Birth Certificate indicating his date of birth as admitted in the records of the Board on payment of the prescribed fee.

69.1 Changes and Corrections in Name

(i) Correction in name means correction in spelling errors, factual errors, typographical errors in candidate's Name/Surname, Father's Name/Mother's Name to make it consistent with what is given in the school record.

Change in name also includes alteration, addition, deletion to make it different from the school records.

(ii) Application for correction in name may be considered any time provided that the application of the candidate is forwarded with the following documents:-

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69.2 Change/Correction in Date of Birth

(i) No change in the date of birth once recorded in the Board's records shall be made. However, corrections to correct typographical and other errors to make the certificate consistent with the school records can be made provided that corrections in the school records should not have been made after the submission of application form for admission to Examination to the Board.

(ii) Such correction in Date of Birth of a candidate in case of genuine clerical errors will be made under orders of the Chairman where it is established to the satisfaction of the Chairman that the wrong entry was made erroneously in the list of candidates/application form of the candidate for the examination.

(iii) Request for correction in Date of Birth shall be forwarded by the Head of the School alongwith attested Photostat copies of :

- (a) application for admission of the candidate to the School;
- (b) portion of the page of admission and withdrawal register where entry in date of birth has been made; and
- (c) the School Leaving Certificate of the previous school submitted at the time of admission.
- (iv) The application for correction in date of birth duly forwarded by the Head of School alongwith documents mentioned in byelaws 69.2(iii) shall be entertained by the Board only within two years of the date of declaration of result of Class X examination. No correction whatsoever shall be made on application submitted after the said period of two years. This will be effective from the examination to be held in March, 1995.”

[6] The Punjab Civil Services Rules as are applicable to the employees of both the states are *pari-matris* but some changes have been made in the respective states. The Rules (Punjab Civil Services Rules Volume 1 part 1) as it exist in the state of Punjab read as under:-

“2.5 **Age** - The day on which a Government employee retires or is retired or is discharged or is allowed to resign from service as the case may be, shall be treated as his last working day. The date of death shall also be treated as working day.

Note 1.- Every person newly appointed to a service or a post under Government should at the time of appointment declare the date of his birth by Christian era with confirmatory evidence as far as possible confirmatory documentary evidence such as Matriculation Certificate, Municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under note 2 below should be recorded in the History of Service, Service Book, or any other record that may be kept in respect of the Government Employee's service under Government and once recorded, it can not be altered except in the case of a clerical error, without the previous orders of Government (see also Annexure A to this Chapter).

Note 2. xxx

Note 3.- For administrative instructions in respect of alterations in the date of birth see Annexure 'A' to this Chapter.

ANNEXURE (A)

(Referred to in rule 2.5 and Note 3 thereunder)

1. [In regard to the date of birth, a declaration of age made at the time or for the purpose of entry into Government service shall, a against the Government employee in question, be deemed to be conclusive. The employees already in the service of the Government of Punjab on the date of coming into force of Punjab Civil Services (First Amendment) Rules, Volume-I, Part-I, 1994, may apply for the change of date of birth within a period of two years from the coming into force of these rules on the basis of confirmatory documentary evidence such as Matriculation Certificate or Municipal Birth Certificate, etc., No request for change of date of birth shall be entertained after the expiry of the said period of two years. Government, however, reserves the right to make a correction in the recorded age of the Government employee when it is satisfied that the age recorded in his service book or in the History of Service of a Gazetted Government employee is incorrect and has been incorrectly recorded with the object that the Government employee may derive some unfair advantage therefrom]*.

2. When a Government employee, within the period allowed, makes an application for the correction of his date of birth as recorded, a special enquiry should be held to ascertain his correct age and reference should be made to all available sources of information such as Certified Copies or entries in the Municipal Birth Register, University or School Age Certificate, Janam Patris or Horoscope. It should, however, be remembered that it is entirely discretionary on the part of sanctioning authority to refuse or grant such application and no alteration should be allowed unless it has satisfactorily been proved that the date of birth as originally given by the applicant was a bona-fide mistake and that he has derived no unfair advantage therefrom.

3. The result of every such enquiry should, in the case of gazetted, non-gazetted Government employee be briefly stated

in their service, cards, service books and if a correction is sanctioned, the facts should be reported to the Account General.”

* (1) substituted vide Notification No. 11/4/93-FP-II/4499 dated 21.6.1994.

[7] The correction of date of birth is sought mostly before attaining the age of superannuation or sometime after joining the public service. It is generally submitted that the date of birth has been wrongly recorded in the matriculation certificate and by the School Education Board as he/she is younger in age relying upon the birth certificate(s) issued by the Registrar of Births and Deaths. There have been numerous cases, which have come up before this Court or other High Courts regarding the correction in the date of birth, sometime taking inconsistent views. We have heard learned counsel at length with a view to reconcile the earlier judgments so as to clarify the law on the subject within the jurisdiction of this Court.

[8] Firstly, we will give a brief resume of the cases in which the date of birth has been ordered to be corrected.

[9] Learned counsel for the appellants relied upon a Single Bench Judgment of this Court in Parveen Malik's case (supra), wherein the Court directed the respondents therein to consider the application of the petitioner therein to seek correction in date of birth. Reference therein was made to the judgments i.e. R.K. Jangra v. State of Punjab and others, (2009)5 SCC 703; Division Bench judgment of this Court in Resham Singh v. Union of India and another, 2008(1) PLR 621; Single Bench judgments of this Court in Shweta Sharma v. State of Haryana and others, 2011(3) RCR (Civil) 442; Pervinder Kumar v. Secretary, C.B.S.E. Haryana Circle and others, 2008(4) RCR (Civil)

237, Karam Singh v. State of Punjab and another, 2006(2) RCR (Civil) 755; Single Bench judgment of the Gujarat High Court in Kokilaben J. Panchal v. Regional Passport Officer, Ahmedabad, AIR 2006 Gujarat 149 and a Single Bench judgment of the Delhi High Court in Rajesh Kumar Jain v. The Secretary, CBSE and others, (1999) ILR Delhi 377. In addition thereto, learned counsel for the appellants, relied upon the judgments of the Single Bench of this Court in Ms. Seerat Khara v. Central Board of Secondary Education and another, CWP No. 13099 of 2013 decided on 15.7.2013; Bhupinder Singh v. Central Board of Secondary Education and another CWP No. 6616 of 2009 decided on 7.10.2009 and Balraj Singh v. Central Board of Secondary Education and another, CWP No. 1567 of 2011 decided on 7.7.2011;

[10] As against the aforesaid cases, wherein the date of birth was ordered to be corrected, there are cases, wherein such request was declined. Such cases are, a Division Bench judgment of the Delhi High Court in Bhagwat Dayal v. CBSE and others, 2011(180) DLT page 1, Single Bench judgments of the Delhi High Court reported as Abhishek Kumar @ Bal Kishan v. Union of India and others, 2014(144) DRJ 8; and Chirag Jain v. CBSE and others, (2011) ILR 5 Delhi 267 apart from the two judgments in appeal before us.

[11] The development of law on the subject may be now noticed. A Division Bench of this Court in a judgment reported as Jiwan Dass v. State of Haryana, (1989)2 ILR (Punjab & Haryana) 110, examined the Punjab Civil Services Rules and the Financial Rules, as applicable to the State of Punjab and also the provisions of the Registration of Births and Deaths Act, 1969. The Court held to the following effect:-

“15. The basic administrative law governing the conditions of service in matters of age is laid down in rule 2.5 of C.S.R. Volume I, Part and rule 7.3 of Punjab Financial Rules, Volume

I (supra). The essential feature in these rules is that age/date of birth at the time of entry into Government service is recorded as per the declaration made by the entrant to service “with confirmatory evidence as far as possible, confirmatory documentary evidence such as Matriculation Certificate and so on” and once recorded it cannot be changed or altered without previous approval of Government except in the case of a clerical error. It is obvious from these provisions that a declaration as to age is assumed as correct and true even without corroborative evidence or record. The door is, however, still kept for alteration, and the condition in the rules is that it can be done only with previous approval of Government. It should be noted that matters regarding consideration of requests for alteration in date of birth and grant of “approval of Government” have not been left to the whim and fancy of the competent authority, but specific administrative orders in this behalf have been laid down and incorporated in the service rules itself as Annexure B to Chapter VII of the Punjab Financial Rules, Volume I. By this administrative order, the Government has made it a binding obligation on itself to hold a special enquiry into all such requests for alteration in date of birth as are made within two years from the date of entry into Government service. It is also provided that the result of enquiry should be briefly stated in the Service book. Obviously, a speaking order is required to be made on each application if, it is made within the stipulated period. There can be no two opinions on the point that matters like date of birth and age which are vital to service, cannot be left open for indefinite periods of time, more so because many a time questions of seniority are determined by age and also because age of employee is one of the vital statistics for planning of cadres and careers and replacement schedules. It should be noted that the statute relating to registration of births and deaths too bars the departmental authorities from entertaining and deciding by themselves, requests for registration of births after expiry of a period of one year and the concerned persons have to go to a court of law.

16. The limitations on departmental authorities in both these laws are both reasonable and essential. The more belated a request of this nature, the more difficult it would be to sort it out satisfactorily through departmental enquiries. Also, it could be that while alternation in date of birth might make an

employee eligible to remain in service for a longer period, it might, at the same time, render him ineligible to a benefit which he may have obtained as a consequence of declaring a certain date as his date of birth at the time of entering service, which he subsequently disputes and wishes to have altered. It is logical that the consequences of alteration in date of birth, whether beneficial or harmful, must visit upon the person of the employee who sought the change. Whereas the benefit of serving for longer years will automatically accrue, the negative consequences will naturally need a digging out and undoing of a benefit unduly given, will raise quite a few legal complications, which in our opinion, should better be agitated before and decided by a court of competent jurisdiction.”

[12] The court thus held that the limitation on departmental authorities in both these laws is both reasonable and essential. It also held that it is logical that the consequences of alteration in date of birth, whether beneficial or harmful, must visit upon the person of the employee who sought the change. The Court held that even after the expiry of the period of two years, the issue can be examined and assessed by the Civil Court.

[13] Most of the judgments relied upon by the learned counsel for the parties are the Single Benches Judgments, except R.K. Jangra's case (supra), which is an order passed by the Hon'ble Supreme Court and Resham Singh's case (supra), which is a Division Bench judgment of this Court.

[14] In R.K. Jangra v. State of Punjab and others, (2009)5 SCC 703, the Hon'ble Supreme Court directed the representation submitted by the appellant to be considered in the light of the documents and material produced by him.

[15] In Resham Singh's case (supra), the challenge was to an order passed by the Passport Authorities declining to make the correction in the passport of the petitioner. The entry in the passport as 23.7.1962

was made on the basis of the matriculation certificate, but in the birth certificate issued by the Registrar of Births & Deaths, the date was mentioned as 26.5.1962. The Court held to the following effect:-

“11. It was, thus, held that where there is a conflict, between the date of birth, recorded by the competent authority under the Births and Deaths Registration Act and the school leaving certificate, primacy was to be accorded to the birth certificate issued by the authority under the Registration of Births and Deaths. It was also held that unless upon verification, the certificate issued by the Registrar of Births and Deaths, appears to be doubtful or suspicious or the Passport authority is not satisfied as to its genuineness, then alone would the Passport authority be justified in declining to effect a correction in the date of birth and directing an applicant to seek adjudication, as to his date of birth before a Civil Court.

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13. A birth certificate is issued by a Registrar of Births and Deaths and reflects an entry extracted from the register maintained by the Registrar under the Registration of Births and Deaths Act, 1969. The aforementioned statute was enacted to provide for and regulate registration of Births and Deaths and for matters connected therewith. Section 7 thereof, requires a State government to appoint a Registrar for each area comprising the area within the jurisdiction of a municipality/panchayat or the local authority or any other area or a combination of any two or more of them. Section 16 of the Act requires every Registrar to keep in the prescribed form a register of Births and Deaths for the registration of births and deaths in his area or any part thereof in relation to which, he exercises jurisdiction. A register of Births and Deaths is, thus, a public record of births and deaths that occur within the area assigned to a Registrar. The Register being a public record, presumption of truth attaches thereto and consequently to the birth certificate, reflecting an extract from the Births and Deaths register. A matriculation certificate, on the other hand, is primary evidence of the marks obtained by a candidate in a qualifying examination and the date of birth recorded as an ancillary measure. Primacy would, therefore, have to be accorded to the date of birth reflected in the birth

certificate issued by the Registrar of Births and Deaths.”

[16] We respectfully agree with the views expressed by the Division Bench of this Court in Resham Singh's case (supra) that the birth certificate is a public record of births and deaths and must prevail over the matriculation certificate issued by school authorities. But the issue required to be examined is that even though the date of birth recorded in the matriculation certificate is at variance with the date of birth as recorded in the Register of Births & Deaths, whether such person is entitled to seek correction in the matriculation certificate relying upon the birth certificate. We find that he is estopped from disputing the entry in the matriculation certificate, which is made basis for employment in the public service in terms of the relevant recruitment Rules.

[17] The Hon'ble Supreme Court in numerous other judgments i.e., Mohd. Hussain v. State of U.P AIR 1964 SC 1625 (Five Judges Bench); Umesh Chandra v. State of Rajasthan, (1982)2 SCC 202 (Three Judges Bench) and Murugan vs. State of T.N., (2011)6 SCC 111 (Two Judges Bench), examined the scope of Section 35 of the Indian Evidence Act. It has been held that Section 35 of the Indian Evidence Act, clearly reveals that there is no legal requirement that public or other official book shall be kept by a public officer but what is required is that it should be kept regularly in discharge of official duties. The Supreme Court interpreted the doctrine of *Ante Litem Motam*, which literally translates to 'before the lawsuit was started'. The doctrine means that if something was done before a legal dispute arose, then it was done at the time when the declarant had no motive to lie.

[18] In Babloo Pasi v. State of Jharkhand, (2008)13 SCC 133, the Supreme Court was examining the grant of benefit of Juvenile Justice (Care of Protection of Children) Act, 2000 to an accused. It was held that that entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act though entry regarding age of a person in school register is not much of evidentiary value to prove the age of the person in the absence of material on which the age was recorded. The Court held as under:-

“28. It is trite that to render a document admissible under Section 35, three conditions have to be satisfied, namely; (i) entry that is relied on must be one in a public or other official book, register or record; (ii) it must be an entry stating a fact in issue or a relevant fact, and (iii) it must be made by a public servant in discharge of his official duties, or in performance of his duty especially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded (see *Mal Singhvi v. Anand Purohit*, 1988 Supp SCC 604).”

[19] In Jabbar Singh v. Dinesh and another, (2010)3 SCC 757, a two Judge Bench of the Hon'ble Supreme Court returned a finding that the entry of date of birth in the admission form in the school record does not satisfy the condition laid down in Section 35 of the Indian Evidence Act. Attention of the Court was not drawn to any of the judgments referred to above, including the judgment of the larger Benches. Therefore, the judgment in Jabbar Singh's case (supra), cannot be said to be binding decision in the face of the judgments of the larger Bench. Thus, we find that the entries made in the school register, be it Government or private school, much before any issue of correct date of birth arises for consideration are relevant, in terms of Section 35 of the Evidence Act. It satisfies the test i.e. entries made in

a public record, in the case of the Government school or official book in the case of the private school. The entry of date of birth is a relevant fact and that it is made by a public servant in discharge of his official duties in case of a Government school and in performance of a duty enjoined by law in case of a private school. Thus entries of date of birth made in the School records are relevant.

[20] The relevance of the entries in the Municipal or Panchayat records has undergone a complete sea change with the enactment of the Registration of Births and Deaths Act, 1969. As per Section 8 of the said Act, the birth is required to be reported to the Registering Officer in all conceivable situations. The reporting of birth, if not made within the prescribed period, is permitted after payment of fine again for delay in reporting. The failure to report birth incurs the risk of prosecution and the penalties. Thus, such provision of recording of date of birth with the Registrar of Births and Deaths is mandatory.

[20-A]. Therefore, we find that the issue is required to be examined in respect of the persons born prior to the commencement of the Act i.e. when recording of date of birth was not a statutory requirement and the persons born after the enactment of such Act, when it was a mandatory condition of recording the date of birth.

[21] In respect of the persons born prior to the applicability of the Act in the Punjab & Haryana and Chandigarh, in the absence of any statutory provisions in respect of the birth, the entry in the matriculation certificate in terms of Section 35 of the Indian Evidence Act, was considered to be a relevant document. A matriculation certificate issued by the School Education Board was made basis of age while entering Government service as per the Civil Services Rules, as reproduced above and applicable in this part of the country.

Therefore, even if there was discrepancy between the date of birth in the Municipal record and in the horoscope etc., then the date of birth in the matriculation certificate was made basis of age for the purposes of Government service that is on the basis of document which meets the test of public document in terms of Section 35 of the Evidence Act. However, it was subject to change in the manner prescribed in the Punjab Civil Services Rules and the Financial Rules. Though on the basis of the doctrine of *Ante Litem Motam*, a person cannot be permitted to dispute the entry of the date of birth in the matriculation certificate, yet the limited right granted to the Government servant could be exercised only in the manner contemplated in Annexure-A, of Punjab Civil Services Rules, as reproduced above. Para 2 of the Annexure A has lost its purpose after enactment of the Act, where the reference is made to other sources of information such as Janam Patris or Horoscope.

[22] But In respect of the persons born after the applicability of the Act, the matter requires to be examined from a different angle. The Act gives statutory recognition to the birth certificates. It is a mandatory requirement for all persons in all conceivable situations to report about the birth and death to the Registration Officers. The Central Board of Secondary Education makes it mandatory to produce date of birth certificate issued by the Registrar of Births and Deaths, wherever existed, as proof of date of birth. If a person does not give date of birth certificate issued by the Registrar at the time of admission to a school, he does it at his own peril. Once he has disclosed a particular date of birth, completed education; he is estopped to rely upon the birth certificate issued by the Registrar of Births and Deaths, at a later stage of life. The admission to a School is to be based upon a date given by the candidate, which date

continues to be reflected in the matriculation certificate as well. Therefore, once a candidate has completed his education on the basis of an assumed date, in conflict with the birth certificate issued by the Registrar of Birth and Deaths, he is estopped to rely upon the birth certificate at the later stage of life.

[23] The Central Board of Secondary Education permits correction in spellings, factual and typographical errors so as to be in tune with the date given in the admission form. The date of birth cannot be permitted to be corrected in terms of the regulation of the School Board merely because in a birth certificate issued by the Registrar, there is a different date than what is mentioned in the matriculation certificate. The correction permitted is of clerical mistakes from the details given in the admission form. It does not entitle a student to seek complete change of date of birth than given in the admission form from the Central Board of Secondary Education.

[24] The tendency of the people of this country to give older date of birth in the matriculation examination to qualify in the matriculation examination but then to rely upon the birth certificate that he is younger in age at the time of employment, cannot be countenanced. No premium can be given to a candidate having qualified matriculation examination with a particular date of birth on the ground that he came to know about his correct date of birth later. It is giving a premium to one for one's own conscious action.

[25] For the sake of brevity, we are not referring to the Single Bench Judgments, some taking a view that the School Education Board can be directed to correct the date of birth and some taking the contrary view, but the question as whether a candidate is estopped to dispute the date of birth in the matriculation certificate has not been

examined in the Single Bench Judgments of this Court or in Resham Singh's case (Supra).

[26] The Rule of estoppel was also applied by the Supreme Court in a judgment reported as Lakshmibai National Institute of Physical Education and another v. Shant Kumar Agarwal, AIR 2013 SC 1544, when the Court found that since at the time of joining as Lower Division Clerk, the respondent therein did not produce any evidence showing his date of birth as 15.1.1948 as against 20.2.1942 as mentioned in the matriculation certificate. The Court held that if he had the certificate issued under the 1969 Act, there was no reason for not producing the same, but producing other record as proof of his date of birth is not tenable. Therefore, the candidate was not permitted to rely upon the birth certificate. The relevant findings are as under:-

“21. There is another reason for our inclination to set aside the impugned judgment. At the time of joining as Lower Division Clerk in the office of Commissioner, Settlement and Director of Land Records, Madhya Pradesh, the respondent did not produce any evidence showing his date of birth as 15.01.1948. At the time of his appointment in 1986 as Personal Assistant in the employment of appellant No.1, the respondent did not produce birth certificate dated 25.2.1970 issued by the Corporation. Rather, he got the date of birth entered in the service book by producing copy of the judgment of the trial Court, which had already been set aside by the lower appellate Court on 27.7.1977.

If the respondent was possessed with the certificate issued by the Corporation under the 1969 Act, then there was no earthly reason for not producing the same for the purpose of recording of date of birth in the service book. However, the fact of the matter is that instead of relying upon the birth certificate, the respondent produced copy of the judgment of the trial Court and got his date of birth recorded as 15.1.1948 by suppressing the fact that the lower appellate

Court had reversed the judgment of the trial Court. Therefore, the Division Bench of the High Court committed serious error by setting aside the orders passed by learned Single Judge.”

[27] In Union of India v. C. Rama Swamy, (1997)4 SCC 647, the Hon’ble Supreme Court, while applying the principle of estoppel held as under:-

“25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be reasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability.

26. In such a case, even in the absence of a statutory rule like Rule 16-A, the principle of estoppels would apply and the authorities concerned would be justified in declining to alter the date of birth. If such a decision is challenged the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. Once having secured entry into the

service, possibly in preference to other candidates, then the principle of estoppels would clearly be applicable and relief of change of date of birth can be legitimately denied. To that extent the decision in Manak Chand Vaidya v. State of H.P. (1976)1 SLR 402, does not lay down the correct law.”

[28] In State of Punjab v. S.C. Chadha, (2004)3 SCC 394, the Supreme Court again applied the principle of estoppel as to why he did not move an application to get the date of birth corrected when certificate was issued. The Court held to the following effect:-

“14. In the instant case the higher secondary examination certificate was issued on 3.6.1962 which contained information that the date of birth of the respondent was only 19.6.1944. If the said certificate disclosed a wrong date, it is not explained by the respondent as to why he did not make any move to get it corrected at that point or on any one of the occasions when he sought and obtained employment in 7/8 public institutions. Merely because in 1994 an opportunity was granted to the government employees to get their date of birth correct, that does not take away the effect of inaction and continued silence for more than three decades, which dehors laches on his part would seriously reflect on the bona fide nature of the claim itself. Even in the application made for employment in the year 1992-93, the date of birth was indicated, as noted above to be 19.6.1944. No contemporaneous document was produced to show that recording of the date of birth to be 19.6.1944 was wrong. Accepting the plea of the respondent would result in two public records, educational on one side and service on the other reflecting two different and conflicting dates of birth. Such anomalous situations are to be averted and not to be countenanced.”

[29] The Rule of estoppel was also extended in a case reported as Eastern Coalfields Ltd. v. Bajrangi Rabidas, (2014)13 SCC 681, when it has been held as under:-

“19. The controversy can be viewed from another angle. Thereafter, the learned Judges opined that there is no justification in the proposition that principle of estoppels would not apply in such a situation. As is manifest, in the case at

hand the respondent stated this on the higher side to gain the advantage of eligibility and hence, we have no trace of doubt that principle of estoppels would apply on all fours. It is well settled in law that jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power of the High Court is required to be exercised “to reach injustice wherever it is found”. In Sangram Singh v. Election Tribunal, (1997) 4 SCC 647, it has been observed that jurisdiction under Article 226 of the Constitution is not to be exercised whenever there is an error of law. The powers are purely discretionary and though no limits can be placed upon that discretion, it must be exercised along recognized lines and not arbitrarily and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in such class of cases unless substantial injustice has ensued or is likely to ensue. That apart, the High Court while exercising the jurisdiction under Article 226 of the Constitution can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. The jurisdiction being extraordinary it is required to be exercised keeping in mind the principles of equity. It is a well known principle that one of the ends of equity is to promote honesty and fair play. If a person has taken an undue advantage the court in its extraordinary jurisdiction would be within its domain to deny the discretionary relief. In fact, Mr. Singh, learned Senior Counsel for the appellants, has basically rested his submission on this axis. In our considered opinion, the Division Bench has erred in extending the benefit to the respondent who had taken undue advantage by not producing the Matriculation Certificate solely on the motive to get an entry into service. It is apt to note here that this Court in Bharat Coking Coal Ltd. v. Shib Kumar Sushad, (2000)8 SCC 696, has ruled that the decision on the issue of date of birth of an employee is not only important for the employee but for the employer also.”

[30] In B.L. Sreedhar v. K.M. Munireddy, (2003)2 SCC 355, the Court held that the rule of estoppel is a rule of evidence and the general rule is enacted in Section 115 of the Indian Evidence Act, which lays down that one person has by his declaration, act or omission caused or permitted another person to believe a thing to be

true and to act upon that belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. It was held as under:-

“13. Estoppel is a rule of evidence and the general rule is enacted in Section 115 of the Indian Evidence Act, 1872 (in short 'Evidence Act') which lays down that when one person has by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. [See Sunderabai and Anr. v. Devaji Shankara Deshpande, AIR 1954 SC 82.

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15. On the whole, an estoppel seems to be when, in consequences of some previous act or statement to which he is either party or privy, a person is precluded from showing the existence of a particular state of facts. Estoppel is based on the maxim, *allegans contrarium non est audiendus* (a party is not heard to allege the contrary) and is that species of presumption *juris et de jure*- (absolute or conclusive or irrebuttable presumption), where the fact presumed is taken to be true, not as against all the world, but against a particular party, and that only by reason of some act done; it is in truth a kind of *argumentum ad hominem*.

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19. Estoppel, then, may itself be the foundation of a right as against the person estopped, and indeed, if it were not so, it is difficult to see what protection the principle of estoppel can afford to the person by whom it may be invoked or what disability it can create in the person against whom it operates in cases affecting rights. Where rights are involved estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights. It would be useful to refer in this connection to the case of Depuru Veeraraghava Reddi v. Depuru Kamalamma, AIR 1951 Madras 403 where Vishwanatha Sastri, J., observed:-

"An estoppel though a branch of the law of evidence is also capable of being viewed as a substantive rule of law in so far as it helps to create or defeat rights which would not exist and be taken away but for that doctrine."

20. Of course, an estoppel cannot have the effect of conferring upon a person a legal status expressly denied to him by a statute. But where such is not the case a right may be claimed as having come into existence on the basis of estoppel and it is capable of being enforced or defended as against the person precluded from denying it."

[31] In Bhagwat Dayal's case (supra), the Division Bench of the Delhi High Court raised a plea of estoppel when it found that the appellant did not challenge or ask for change of date of birth even though he appeared in Class 10 in the year 2000 and in All India Secondary Certificate examination in the year 2003. Therefore, the mistake said to have come to his notice in January, 2010 when the appellant was appearing in the Civil Services Examinations, has been rightly not accepted. The Court held as under:-

"8. In the present case, class 10 certificate is dated 3rd June, 2000. Thereafter, the appellant had appeared in the All India Secondary School Certificate Examination in the year 2003. At that time also, the appellant did not challenge or ask for change of the date of birth or the name of his father. The plea taken by the appellant that he could not observe the aforesaid mistake till January, 2010 when the appellant was appearing in Civil Services Examination has been rightly not accepted. The appellant had obtained a certificate from Health Department of Government of Haryana on 2nd February, 2010 and then had approached CBSE and his school....."

[32] The said judgment has been followed by the learned Single Bench in Chirag Jain's case (supra), when it recorded the following observation:-

"10. The 10th certificate issued by the CBSE goes with the life of a student as this certificate is the authenticated proof of

the date of birth of a student. Such certificate is invariably accepted as a valuable piece of evidence in proof of date of birth and age of the applicant throughout his career ahead and even the courts attach a high degree of probative value to the certificate and the date of birth as entered in the certificate is accepted as almost binding. A student and his/her parents have to be very careful, alert and vigilant while disclosing the date of birth at the time of submission of forms for the examination of 10th class as any error at that stage certainly can prove fatal. In the face of all these documents, it is hard to believe that the parents of the petitioner and the petitioner himself would keep committing the mistake in furnishing the said date of birth. The particulars in the certificates, especially the date of birth carry with them a prima facie guarantee of correctness as they are furnished by the parents or the applicant himself and hence it is difficult to assume that they are false or incorrect. Date of birth is something that no parent or child can forget or mistake and while receiving the certificate if there is a mistake then the student would make out within no time the mistake in the certificate and take steps for immediate rectification.”

[33] LPA No. 697 of 2011 against the judgment in Chirag Jain’s case (supra) was dismissed on 29.8.2011 and SLP by the Hon’ble Supreme Court on 30.9.2013.

[34] The plea of estoppel has been extended in numerous cases, in respect of the date of birth in this court as well. One of the cases is reported as Amit Chillar v. State of Haryana and another, 2008(6) SLR 236, wherein a Division Bench of this Court applied the principle of estoppel, as extended by the Hon’ble Supreme Court in C. Rama Swamy’s case (supra). The Court held to the following effect:-

“8. The arguments of learned counsel for the petitioner that the certificate issued by the Registrar, Births and Death must prevail over the matriculation certificate issued by the Board or the University for the purposes of date of birth has also not impressed us because the petitioner himself has declared his date of birth in the application form to be 17.2.1986. He has,

however, later on placed reliance on the certificate issued by the Registrar, Births and Deaths showing his date of birth to be 27.2.1985. The certificate of matriculation has been issued to the petitioner long time ago. But no effort was made by the petitioner to get it corrected in accordance with the certificate of the Registrar, Births and Deaths. The petitioner cannot be permitted to carry two certificates and claiming two different dates of births, which could be used on different occasions as per his convenience. Such a course would result into iniquitous result and the Courts cannot approve such a conduct. Therefore, the principle esstoppel would fully apply to the facts of the present case as has been held by Hon'ble Supreme Court in Union of India v. C. Rama Swamy, (1997)4 SCC 647."

[35] We may notice that in the judgment reported as Hari Prasad Handa vs. The State of Punjab, 1985(1) PLR 39, a learned Single Judge, distinguished the judgment of Andhra Pradesh High Court reported as Bathul Gabriel v. District Manager, APSRTC Kurnool, 1982(1) SLR 576 to hold that the rule of estoppel would not debar a candidate from claiming and to prove that the date of birth given earlier in the certificate was not the correct one. Another Single Bench of this Court in State of Haryana v. Chander Singh alias Chander Bhan, 1988(2) PLR 264, followed the judgment in Hari Prasad Handa's case (supra).

[36] The Andhra Pradesh High Court in Bathul Gabriel's case (supra) held as under:-

"12. Man is born only once. He lives only once and however great a coward he might be, he dies only once. To this universal law of nature, those in public services should not try to constitute any exception.

13. The petitioner in this case at the time of his appointment had given his date of birth as 18.9.1924. That date of birth was accepted by the employer and the very appointment of the petitioner was based on a contract of which that date is a term. The petitioner, cannot, now take the benefit

of this contract of employment and repudiate the disadvantage of a term of that contract relating to his date of birth.....”

[37] We find the judgment of this Court in Hari Prasad Handa's case (supra), is not the correct enunciation of law in the light of the judgments of this court as well of the Hon'ble Supreme Court. A candidate represents a particular date of birth while taking admission in the school much before any dispute about age is raised and he continues to rely upon the same till he joins public employment, therefore on the basis of doctrine of *Ante Litem Motam*, he cannot be permitted to dispute the entry of the date of birth in the matriculation certificate. Once, he has represented a particular date of birth, he is estopped to claim any other date of birth. Therefore, having represented and grown with a particular date of birth, to turn round to say that his date of birth is different, is not permissible in view of the principle of estoppel.

[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.

[43] In Darshan Singh v. Gurdev Singh, (1994)6 SCC 585, the Hon'ble supreme Court held that Section 6 of the Limitation Act, alone gives rights and enlarges the limitation and entitles the minor or insane, or an idiot, to institute a suit or make an application within the same period after the disability has ceased. The Court held to the following effect:-

“....third column of the Schedule might have expired by efflux of time, Section 6 elongates the right and enlarges the limitation and entitles the minor, insane or idiot to institute the suit or make the application within the same period prescribed in the third column of the Schedule to the Act, after the disability to which the minor, the insane or the idiot has been subjected to, ceased. Section 8 makes special exception to Section 6. In other words, notwithstanding the availability of limitation in the third column of the Schedule prescribed under the relevant article, the suit or application shall be filed within three years from the cessation of the disability or the death of a person affected thereby engrafting the language thus:

"8. Special exceptions.- Nothing in Section 6 or in Section 7 applies to suit to enforce rights of preemptions, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period of limitation for any suit or application."

4. In other words, Section 8 is a proviso to Section 6 or 7. combined effect of Sections 6 and 8 read with third column of

the appropriate article would be that a person under disability may sue after cessation of disability within the same period as would otherwise be allowed from the time specified therefor in the third column of the Schedule but special limitation as an exception has been provided in Section 8 laying down that extended period after cessation of the disability would not be beyond three years from the date of cessation of the disability or death of the disabled person.”

[44] In Bailochan Karan v. Basant Kumari Naik, (1999)2 SCC 310, the Hon’ble Supreme Court followed the judgment in Darshan Singh’s case (supra) to hold as under:-

“6. In the present case the maximum period of limitation available to the appellant was only three years from the date of his attaining majority, in other words, cessation of the disability. This position has been considered by this Court in Darshan Singh & Ors. v. Gurdev Singh, (1994) 6 SCC 585. It is clearly laid down that Section 8 is a proviso to Sections 6 or 7. A combined effect of Sections 6 and 8 read with third column of the appropriate article would be that a person under disability may sue after cessation of disability within the same period as would otherwise be allowed from the time specified therefore in the third column of the schedule. But such extended period would not be beyond three years from the date of the cessation of the disability. Consequently the right to file a suit of the appellant got expired at the end of three years from the date of his attaining majority, whether it was 1963 or 1966. In this case it is unnecessary for us to consider whether the appellant attained majority in 1966 on completion of 21 years or in 1963 on completion of 18 years as it is not relevant for the purposes of this case. The plaintiffs, therefore, perfected their title by virtue of Section 27 of the Limitation Act.”

[45] The right to seek actual date of birth has to be exercised within three years of attaining the majority on the basis of the birth certificate issued by the Registrar of Births and Deaths. But, after expiry of period of three years from the cessation of disability, no

person can rely upon the birth certificate. He is bound by the date given in the matriculation certificate. Therefore, in any case, the right of a person to seek actual date of birth on the basis of entry in the birth certificate by the Registrar of Births and Deaths is three years after attaining the majority on the basis of date of birth in the said certificate.

[46] We do hope that the schools within the jurisdiction of this Court insist upon birth certificate issued from the Registrar of Births and Deaths at the time of admission to the schools so that such date of birth is correctly reflected in the matriculation certificate. If it is not being followed, all schools, Government, Public and/or Private, shall not grant admission to the child unless he produces his birth certificate from the Registrar, Births & Deaths. Thus, the date of birth in the school record leading to matriculation certificate would be in sync with the date of birth from the records of the Registrar of Births & Deaths.

Now the facts of the two Appeals.

LPA No. 1613 of 2014 (Ambika Kaul vs. CBSE and others)

[47] In this case, the School certificate records the date of birth as 4.7.1992, whereas she has claimed that her actual date of birth is 4.7.1991. She has approached this Court in the year 2014 i.e. when on the basis of her actual birth certificate she was more than 21 years of age. Thus, she could not seek correction of date of birth on the basis of the certificate issued by the Registrar, Births and Deaths. The Learned Single Judge has rightly held that the correction in date of birth must have been applied within three years of her attaining the age of majority. In view thereof, we do not find any error in the

order passed by the learned Single Judge. Hence, LPA No. 1613 of 2014 is dismissed.

LPA No. 373 of 2015 (Shubham Attri v. CBSE and others).

[48] In this case, the School records mention 12.6.1996 as appellant's date of birth, whereas the date of birth as per the birth certificate is 12.6.1995. The writ petition was filed in the year 2014 i.e. within three years of attaining majority on the basis of the actual date of birth. The Rules of the Central Board for Secondary Education, do not permit any change of date of birth, except in the case of clerical or arithmetical mistake that too on the basis of entries in the admission form. Though, the appellant should have been directed to approach the Civil Court, yet since he has approached this Court without taking an advantage of matriculation certificate for any purpose and seeks correction in the date of birth for the purpose of obtaining passport, we deem it appropriate to direct the respondent-Board to alter his date of birth to be the same as in the birth certificate issued by the Registrar, Births and Deaths. The appeal stands disposed of accordingly.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

May 21, 2015
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