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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5323/2015**

KALPANA THAKUR & ANR

..... Petitioners

Through

Mr. Rono Mohanty, Mr. Nalin Talwar
& Mr. Parijat Kumar, Advocates

versus

CENTRAL BOARD OF SECONDARY EDUCATION

& ANR

..... Respondents

Through

Mr. Amit Bansal, Ms. Manisha Singh,
Ms. Seema Dolo & Mr. Akhil
Kulshrestha, Advocates for R-
1/CBSE.
Mr. S. Chihar, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

17.09.2015

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1. In this writ petition, petitioner prays for quashing the Office Order dated 16.02.2015, issued by the respondent No. 1/Central Board of Secondary Education (hereafter referred to as the CBSE). Besides the aforesaid prayer, there is also a direction sought from this Court qua CBSE, which is that, it should ignore the Office Order dated 16.02.2015 and carry out the correction vis-a-vis the name of petitioner No. 2's mother.
2. It would be pertinent to note that the mother of the petitioner No. 2, is arrayed as petitioner No. 1, in the writ petition.
3. In sum, the petitioner No. 2 seeks the following relief: that her mother's name, which is, recorded in her Class X Certificate as 'Shraddha Thakur' should be corrected to 'Kalpana Thakur'.

4. In fact what, petitioner No. 2 seeks, is a change in the name of her mother as against a mere correction in the name.

5. The reason this distinction is drawn, is on account of the fact that there are two separate bye-laws enacted for the said purpose by the CBSE. Long title of the bye-laws framed by the CBSE read as “Examination Bye-laws, 1995” (in short the Bye-laws). The Bye-laws with which one is concerned in the present petition is Bye-law 69.1(i). Accordingly, Bye-law 69.1(i) is extracted hereafter:

69.1 Changes and Corrections in Name

i) Change in name of candidate/Father/Mother/Guardian once entered in the Board’s record at any stage while studying in Class IX, X, XI, XII or thereafter, within a period of ten years from the date of issue of first such document shall be considered on written request of the Candidate (not minor)/father/mother/guardian duly forwarded by the Head of the Institution supported by the following documents:

a) Original copy of two newspapers (daily English/Hindi newspaper at National level & daily newspaper in a vernacular language circulated in the locality), in which the desired change has been published.

b) Original Affidavit duly sworn before the Judicial Magistrate, First Class/Metropolitan Magistrate/Executive Magistrate/Sub Divisional Magistrate.

c) Original copy of Publication in Government Gazette.

d) Payment of prescribed fee.

e) True Copy of admission form filled in by the parents duly updated as per Gazette Notification of desired change and duly attested by the Head of the concerned institution.

f) True Copy of School Leaving Certificate of the previous school submitted by the parent/candidate at the time of admission and updated as per Gazette Notification of

desired change, duly attested by the Head of the concerned institution.

g) True Copy of the page of admission and withdrawal register of the school where the entry has been made in respect of candidate showing updation as per Gazette Notification of desired change, duly attested by the Head of the concerned institution.

ii) Correction in name to the extent of correction in spelling errors, factual typographical errors in the Candidate's name/Surname, Father's name/Mother's name or Guardian's name to make it consistent with what is given in the school record or list of candidates (LOC) submitted by the school may be made.

Application for correction in name of Candidate/Father's/Mother's/Guardian's name will be considered only within ten years of the date of declaration of result provided the application of the candidate is forwarded by the Head of Institution with the following attested documents:

a) True Copy of Admission form(s) filled in by the parents at the time of admission duly attested by the Head of the concerned institution.

b) True Copy of the School Leaving Certificate of the previous school submitted by the parents of the candidate at the time of admission duly attested by the Head of the concerned institution.

c) True copy of the portion of the page of admission and withdrawal register of the school where the entry has been made in respect of the candidate, duly attested by the Head of the concerned institution.

6. Insofar as the petitioner is concerned, it is her stand that she has complied with the requirements of Bye-law 69.1(i).

6.1 What is apparent on a bare reading of the said Bye-law is that there are pre-requisites to be fulfilled by the applicants who seek a change in

name, whether it concerns the candidate/applicant or his/her parents or even his/her guardian.

7. In this particular case, the petitioner No. 1 got a publication carried out on 22.08.2014, in two daily Newspapers i.e. The Indian Express and Jansatta, qua the change of name. By virtue of the said publication, petitioner No. 1 informed the public at large that she would henceforth, be known as “Kalpana Thakur” as against “Shraddha Thakur.”

7.1 Consistent with the aforesaid action, petitioner No. 1 filed an application for issuance of a Gazette Notification, with the concerned authority. The said application was accompanied by the two notices published in the newspapers, referred to above, and an affidavit.

7.2 The Gazette Notification was published in the Gazette of India on 13/19.12.2014. The Gazette Notification, accordingly, reflected the change in the name, as desired by petitioner No. 1.

7.3 Based on the aforesaid, respondent No. 2, which is, the concerned School, carried out a correction in their own records with regard to the petitioner No. 1’s name. This amendment was carried out by the respondent No. 2/School, in its records on 05.03.2015, and on that very date, a request for change of petitioner No. 2’s mother’s name was forwarded by it, to the respondent No. 1/CBSE along with the relevant documents.

8. There is no dispute at this stage, that a request letter for change of name forwarded by the respondent No. 2/School was received by respondent No. 1/CBSE, on 09.03.2015.

9. It is, however, averred by the petitioners that the officer of respondent No. 1/CBSE apprised them that on account of the issuance of office order dated 16.02.2015, the request made would not be acceded to and that they

would have to approach the Court for necessary relief in the matter. It appears the contents of the office order were also highlighted in a news report published in The Times of India, Delhi Edition, on 18.05.2015.

9. Aggrieved by the stance taken by respondent No. 1/CBSE, the petitioner has approached this Court by way of the instant writ petition.

9.1 In this writ petition, notice was issued to the respondents on 27.05.2015, whereupon the respondent No. 1/CBSE has filed its return. No return though, has been filed by the respondent No. 2/School. The petitioners have, however, filed a rejoinder to the counter affidavit filed on behalf of the respondent No. 1/CBSE.

10. Mr. Mohanty who appears for the petitioners has argued in line with assertions made in the petition, while Mr. Bansal who appears for respondent No. 1/CBSE has made two principal arguments. First that Bye-law 69.1(i) relied upon by the petitioners stands amended. In this behalf Mr. Bansal submits that a notification was issued by the CBSE on 25.06.2015 and therefore, the petitioners' case, would have to be seen in the light of the amended bye-law. Notwithstanding the aforesaid contention, Mr. Bansal's other argument, is that, even if this Court were to take cognizance of the unamended bye-law, no relief can be granted to the petitioners as a change in the name as against a correction in the name of the candidate and/or his/her parents or guardian will entail a change in "identity".

11.2 Mr. Bansal in support of his submissions has relied upon a judgment of the Division Bench of this Court passed in Writ Petition No. 3266/2014, dated 03.07.2015, titled: ***Abhishek Kumar @ Bal Kishan v. Union of India & Ors.***, [2014 (144) DRJ 8].

11.3. Furthermore, reliance is also placed by Mr. Bansal on the order dated

07.08.2015, passed by a Single Judge of this Court, in W.P. (C) No. 7495/2015, titled: ***Tanu Jain v. Central Board of Secondary Education.***

12. I have heard the learned counsels for the parties and have perused the record. According to me in the instant case, respondent No. 1/CBSE had issued a matriculation certificate (i.e. Class X Certificate) to petitioner No. 2, in the year 2013. An application to effect the change in petitioner No. 2's mother's name (i.e. petitioner no. 1) was made via respondent No. 2/School to respondent No. 1/CBSE, on 05.03.2015. Therefore, insofar as the petitioner No. 2 is concerned, if the unamended Bye-law 69.1(i) is applied, her case would fall within the window period of ten (10) years provided therein, for effecting the change in name.

12.1 However, before one applies the unamended Bye-law 69.1(i) to the facts of the instant case, one would have to get over the objection raised by Mr Bansal that the said Bye-law would have no application in view of the amendment carried out by respondent no.1/CBSE. In support of this submission, Mr Bansal has relied upon the Office Order dated 16.02.2015, issued by respondent no.1/ CBSE.

12.2 In my view, the submission of Mr Bansal that amended Bye-laws 69.1(i) would apply, is untenable, for a simple reason that the amendment to the said bye-law was notified only on 25.06.2015; a date which falls beyond the date on which the application for change of name was preferred in the instant case. The argument advanced in support of this submission by Mr Bansal that the Office Order was in place prior to the date of the application, in my view, will not sustain, as the Office Order, is an internal document, which could have no legal validity till the position taken therein is put in public realm. The very fact that a notification in respect of the amended

Bye-law was issued by respondent no.1/ CBSE, would show, that the decision to amend bye-law 69.1(i) required a public notice.

12.3 Consequently, all applications for change of name which are filed prior to notification dated 25.06.2015, will be governed, in my view, by the unamended Bye-law 69.1(i). Therefore, quite logically, the petitioners, in my opinion, would have to be given the reliefs as sought in the writ petition.

12.4 The reliance placed by Mr Bansal on the judgement of the Division Bench in the case of ***Abhishek Kumar @ Bal Kishan v. Union of India & Ors*** would also not help the cause of respondent no.1/ CBSE. The reason for this is as follows: The petitioner, in ***Abhishek Kumar @ Bal Kishan v. Union of India & Ors***, had approached the court after the window period of ten (10) years for effecting change of name had lapsed. The facts, as detailed out in the said judgement, reveal that the petitioner was issued Class X and XII certificates in the years 1988 and 1990 respectively. The petitioner, however, had approached the CBSE for change of name only in January, 2014. It is for this reason, that the Division Bench did not grant relief to the petitioner.

12.5 The other case, on which reliance was placed was sought to be placed by Mr Bansal is the case titled : ***Tanu Jain v. Central Board of Secondary Education***. A careful reading of facts detailed out in the said case would show that no adjudication took place in that case as the writ petition was ultimately dismissed as withdrawn. The order passed by the court, in that sense, not being a judgement, in my view, is not a precedent on which reliance can be placed by respondent no.1/ CBSE.

12.6 The change of identity argument advanced by Mr. Bansal to support his submission that the unamended Bye-law, should apply, in the given case

is, misconceived for the following reasons. There is no gainsaying that a name provides an identity to a person. The change in name results in a new identity. Merely, because there is a change in identity, it cannot be a reason to deny an applicant the benefit of the unamended Bye-law if, he or she fulfils, the stipulated criteria.

13. Accordingly, the writ petition is allowed. Respondent no.1/ CBSE is directed to effect change in the name qua petitioner no.1 as prayed, in terms of its unamended Bye-law, 69.1(i). Needless to say, the said exercise will be carried out by respondent no.1/ CBSE with due expedition, though not later than three (3) weeks from today.

14. Before I conclude, I must point out that the counsel for the petitioners brought to my notice that during the pendency of the present writ petition, petitioner no.2 sat for the Class XII exams as well and has consequently passed out from respondent no.2 / school. It is further contended that on account of the relief granted by this court in the writ petition, respondent no.1/CBSE should effect the necessary changes in Class XII certificate, as well.

15. I have no doubt in my mind that, in view of the fact that petitioners have been granted relief in the present writ petition, respondent no.1/ CBSE will logically effect changes in the petitioner no.2's Class XII certificate, as well.

16. The writ petition is disposed of with the aforesaid directions. The parties will, however, bear their own costs.

RAJIV SHAKDHER, J

SEPTEMBER 17, 2015/rs