

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 416/2014**

Harischandra P. Suvarn,
age 45 years, r/o. H.No. 90/1,
Shirewada Nagarcem,
Canacona, Goa.

..... Petitioner.

V/s.

1. State of Goa,
through Chief Secretary,
Secretariat, Porvorim, Goa

2. St. Teresa Jesus High School,
Chaudi, Canacona, Goa

3. Goa Board of Secondary and
Higher Secondary Board,
Alto Betim, Goa.

4. Deputy Director of Education,
Near Holy Spirit Church,
South Zone, Margao, Goa.

..... Respondents.

Shri V. A. Lawande and Shri D. R. Vernekar, Advocates for the
petitioner.

Mr. P. Dangui, Additional Govt. Advocate for the respondents No.1, 3
and 4.

Shri Nigen Costa Frias, Advocate for the respondent No.2.

**CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date :- 23/06/2016.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Shri V.A. Lawande, learned Counsel appearing for the petitioner, Shri P. Dangui, learned Additional Govt. Advocate appearing for the respondents No.1, 3 and 4 and Shri Nigel Costa Frias, learned Counsel appearing for the respondent No.2.

2. The above petition, inter alia, seeks for directions to the respondent No.2 to correct the date of birth of the son of the petitioner named "Prajval H. Suvarna" on the school leaving certificate register as 14/05/1998 and further directions to the respondent No.3 to hand over the original Passing Certificate cum Statement of Grades under No.1317212.

3. Upon hearing the learned Counsel appearing for the respective parties, it appears that the controversy revolves around the date of birth of the son of the petitioner.

4. It is pointed by Shri V.A. Lawande, learned Counsel appearing for the petitioner that the correct date of birth of the son of the petitioner is 14/05/1998 and in support thereof, the petitioner has produced the birth certificate issued by the Registrar of Births. It is further pointed out that in the School Register, the date of birth of the son of the petitioner is shown

as 14/11/1997 which, according to the petitioner, is not correct date of birth of the said minor son. Shri Lawande has also brought to our notice an Identity Card issued by the School Respondent No.2 which reflects the correct date of birth of the son as shown in the Birth Certificate. The learned Counsel further points out that the said son passed his Matriculate Examination during the Academic Year 2012-13 and as the Passing Certificate cum Statement of Grades was showing the date of birth as shown in the Register maintained by the respondent No.2 School as 14/11/1997, the petitioner filed an application before the respondent No.3 to correct the date of birth. Accordingly, the date of birth came to be corrected by the respondent No.3, but, however, without issuing any notice to the petitioner or giving an opportunity of being heard, the date of birth came to be changed to the earlier date, as shown in the School Register. Mr. Lawande has pointed out that such an exercise is in breach of the principles of natural justice as, admittedly, the petitioner was not given an opportunity of being heard and, in any event, the correct date of birth of the petitioner is the one which reflects in the Birth Certificate. As such, according to the learned Counsel, the petitioner is forced to file the present petition for rectifying and/or correcting the date of birth as shown in the Passing Certificate and the Leaving

Certificate.

4. On the other hand, Shri P. Dangui, learned Additional Govt. Advocate appearing for the respondents No.1, 3 and 4 has pointed out that on the basis of the date of birth disclosed in the declaration which showed the date of birth to be 14/11/1997, the son of the petitioner became eligible to be admitted to the First Standard as having the age of 5 and half years as on 1st June of the relevant year. The learned Additional Govt. Advocate further points out that as such, the dates as shown in the Passing Certificate and the School Leaving Certificate are in accordance with the date of birth as disclosed in the Register maintained by the School Respondent No.2. The learned Additional Govt. Advocate, as such, points out that there is no reason to now correct the date of birth.

5. Shri Nigel Costa Frias, learned Counsel appearing for the respondent No.2 submits that the date of birth shown in the School Leaving Certificate is in accordance with the date as shown in the Register maintained by the respondent No.2 School at the time of initial admission of the son of the petitioner in First Standard.

6. We have considered the submissions of the learned Counsel and we have gone through the records. Before we proceed to examine the rival contentions, we find that it cannot be disputed that the correct date of birth of the son of the petitioner is the one reflected in the Birth Certificate issued by the Registrar of Births. In the present case, it is not disputed that the date of birth as shown in the Birth Certificate is 14/05/1998. Whenever, there is any discrepancy with regard to the date of birth as shown in the School Register and the date of birth shown on the Birth Certificate maintained by the Registrar of Births, the date of birth as shown in the Birth Certificate issued by the Registrar of Births would prevail. In this case, there is no material to show otherwise. In this connection, the Apex Court, in a Judgment reported in **(2014) 6 SCC 434** in the case of **Iswarlal Mohanlal Thakkar vs. Paschim Gujarat Vij Company Limited and another**, has observed at para 19, thus :

“ 19. Therefore, in view of the above judgments we have to hold that the High Court has committed a grave error by setting aside the findings recorded on the points of dispute in the award of the Labour Court. A grave miscarriage of justice has been committed against the appellant as the respondent should have accepted the birth certificate as a conclusive proof of age, the same being an entry in the public record as per

Section 35 of the Evidence Act, 1872 and the birth certificate mentioned the appellant's date of birth as 27-6-1940, which is the documentary evidence. Therefore, there was no reason to deny him the benefit of the same, instead the respondent Board prematurely terminated the services of the appellant by taking his date of birth as 27-6-1937 which is contrary to the facts and evidence on record. This date of birth is highly improbable as well as impossible as the appellant's elder brother was born on 27-1-1937 as per the school leaving certificate, and there cannot be a mere 5 months' difference between the birth of his elder brother and himself. Therefore, it is apparent that the school leaving certificate cannot be relied upon by the respondent Board and instead, the birth certificate issued by BMC which is the documentary evidence should have been relied upon by the respondent. Further, the date of birth is mentioned as 27-6-1940 in the LIC insurance policy on the basis of which the premium was paid by the respondent to the Life Insurance Corporation on behalf of the appellant. Therefore, it is only just and proper that the respondent should have relied on the birth certificate issued by BMC on the face of all these discrepancies as the same was issued on the order of JMFC. ”

7. Taking note of the said observations of the Apex Court, it

cannot be disputed that the date of birth, as shown in the Birth Certificate of the son of the petitioner, is the correct date of birth. Apart from that the Identity Card which was issued by the respondent No.2 also reflects the correct date of birth of the son of the petitioner. It is not in dispute that pursuant to an application filed by the petitioner, the date of birth shown in the Passing Certificate was corrected as shown in the Birth Certificate of the petitioner. The exercise of reversion of the date of birth was carried out by the respondent No.3, without hearing the petitioner. It was incumbent upon the respondent No.3 to give a hearing to the petitioner before coming to such a conclusion.

8. The contention of the learned Additional Government Advocate that a false declaration was given to enable the son of the petitioner to get himself admitted to First Standard, is a matter which would have to be examined by the Authorities concerned on its own merits. Merely because a wrong date is shown in the Register, by no stretch of imagination such a birth certificate can jeopardize the future prospects of the son of the petitioner to pursue his future career. The Certificates issued by the Educational Institute have to disclose the correct date of birth of the students. As such, we find that the correct

date of birth of the son of the petitioner named Prajval H. Suvarna is 14/05/1998 as reflected in the Birth Certificate issued by the Registrar of Births for all legal purposes. There is nothing on record to disapprove the presumptions in law with that regard.

9. Hence we dispose of the above petition by holding that the correct date of birth of the son of the petitioner named Prajval H. Suvarna is 14/05/1998 for all legal purposes.

10. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.

F.M. REIS, J.

ssm.