

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 24123 of 2016
Date of decision: 22.11.2016

RubyPetitioner(s)

Versus

The Central Board of Secondary Education and others ...Respondent(s)

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

Present: Ms. Sheena Khanna, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

Counsel for the petitioner has been allowed to correct the heading and the prayer clause in Court. Office to make necessary corrections at appropriate places.

The petitioner seeks the correction of the date of birth as 09.11.1992 instead of 02.11.1992 on the basis of the correct date of birth as per the birth certificate Annexure P-5. It is not disputed that in the matriculation certificate dated 29.05.2008 (Annexure P-2) issued by the Board, the petitioner's date of birth is mentioned as 02.11.1992. The change in the date of birth was sought only on 15.02.2016 (Annexure P-6) on the strength of the certificate issued by the Local Registrar (Births & Deaths). The case has been rejected on the ground by communication dated 15.02.2016 (Annexure P-6) by the Board that representation for correction has not been initiated within one year of the declaration of the result.

The Division Bench of this Court in *Ambika Kaul vs. Central Board of Secondary Education and others, 2015 (3) SCT 350* has held that

the candidates are bound by the undertakings given by their parents when admission is taken in the school and the rule of estoppel debars them to dispute the date of birth. It has been held that the only exception is that there is a 3 years window provided to challenge the same on attaining the age of majority. The relevant observations read thus:-

“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.*

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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.”

In the present case, admittedly the representation has been given beyond the period of 3 years from attaining the age of majority and, therefore, the action of the Board in rejecting the application for change of date of birth does not suffer from any illegality which would warrant interference under Article 226 of the Constitution of India and accordingly the present writ petition is dismissed.

22.11.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No