

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

Civil Writ Petition No.9533 of 2016

Date of decision: 12.7.2016

Arti Yadav

...Petitioner

Versus

Central Board of Secondary Education and others

...Respondents

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

Present: Mr. J.P.Sharma, Advocate for the petitioner.

Mr. N.K.Setia, Advocate for respondents no.1 and 2.

Mr. Gaurav Jindal, Addl. Advocate General, Haryana
for respondents no.3 and 4.

Mr. Mukesh Kumar Verma, Advocate for respondent no.5.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks quashing of order dated 16.10.2015 (Annexure P/5) vide which application for correction of the date of birth moved in September, 2015 has been rejected. The correction is sought in the matriculation certificate issued on 20.5.2014 (Annexure P/3) by the respondent-Board wherein her date of birth is mentioned as 22.4.2000.

The claim of the petitioner is based on the birth certificate (Annexure P/1) issued on 1.6.2006 by the Registrar, (Births and Deaths) Municipal Council, Rewari which was registered on 27.4.1999 showing her date of birth as 22.4.1999.

The case of the petitioner is that admission was taken in Upper KG on 2.8.2003 and at that time wrong date of birth was mentioned and resultantly rectification was sought in September, 2015 by filing an appropriate application (Annexure P/4).

Counsel for the petitioner submits that keeping in view the fact that there is certificate issued by the Registrar, (Births and Deaths), Municipal Council, Rewari and therefore, it has evidentiary value and the petitioner is entitled for correction of date of birth.

In the written statement filed by the respondent-Board, reliance has been placed upon the Division Bench judgment in **Ambika Kaul Vs. Central Board of Secondary Education and others** 2015(3) S.C.T. 350 and that correction was sought to be made after one year which was not permissible under By-law 69.2(iii)

A perusal of the DB judgment would go on to show that legal issue whether claim for correction of date of birth on the basis of entry in the register maintained by the Registrar (Births and Deaths) could be entertained was considered. The case law on both the sides was elaborately discussed and it was noticed that it was a tendency to give older date of birth in the matriculation examination to qualify and then to rely upon the birth certificate. Accordingly, it was held that having qualified the matriculation examination with a particular date of birth the person cannot be allowed to seek correction in view of the principle of estoppel especially after enforcement of the Registration of Births and Deaths Act, 1969.

The contrary views taken by the Single Judges of this Court were not approved and it was held that once having grown with a particular date of birth, a candidate could not dispute the date of birth if it is not in consonance with the certificate issued by the Registrar (Births and Deaths) and it was not a correction on account of clerical mistake which could be corrected under By-law 69.2. Relevant paragraphs of the judgment of **Ambika Kaul's case** (supra) read as under:-

“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.

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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.”

Resultantly, keeping in view the settled principle of law laid down, this Court is of the opinion that prayer made for correction of date of birth after a period of 13 years is not justified. Resultantly, no fault can be found with the impugned order dated 16.10.2015 (Annexure P/5) passed by the respondent-Board.

Accordingly, the present writ petition is dismissed.

July 12, 2016
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(G.S.SANDHAWALIA)
Judge