

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2523 of 2016 (O&M)

Date of Decision: 05.12.2016

CBSE

...Appellant

Vs.

Mohit and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Nitin Kant Setia, Advocate
for the appellant.

Amol Rattan Singh, J.

This is an appeal by the Central Board of Secondary Education, after the suit seeking declaration and consequential mandatory injunction, filed by respondent no. 1 herein, was dismissed by the learned Civil Judge (Junior Division), Meham, but the appeal filed by the plaintiff before the first appellate Court, was allowed by that Court and the plaintiffs' suit decreed in his favour.

2. The facts, as taken from the judgments of the learned courts below, are that the plaintiff, who was a minor at the time of institution of the suit on 08.09.2014, sought a decree of declaration to the effect that his date of birth is 11.11.1997 and not 11.11.1999 and as such, he was entitled to get his actual date of birth recorded in the records with the present appellant, as also with the school from which he passed his examination, i.e. defendant no. 3, Adarsh Senior Secondary School, Madina, Tehsil Meham, District Rohtak (present respondent no. 2).

He also sought a decree of mandatory injunction directing the first three respondents, i.e. the present appellant as also its Controller of examinations, and the school aforesaid, to issue him the certificate of having completed his secondary education, with the corrected date of birth.

3. As per the plaintiff, (who, being a minor, had filed the suit through his father), he completed his matriculation examination in the year 2014, with his date of birth wrongly given as 11.11.1999 in his matriculation certificate. He contended that, in fact, as per the birth certificate issued by defendant no. 4 (respondent no. 3 herein), i.e. the District Registrar, Births and Deaths, Rohtak, his date of birth was 11.11.1997. It was submitted that since the plaintiff needed his birth certificate in the month of May 2014, he applied for it and received it the same day and thereby discovered that his actual date of birth was 11.11.1997. He therefore, requested the other defendants for a change of the date in his matriculation certificate, but with no heed paid to his request.

Consequently, the suit was instituted by the plaintiff on 08.09.2014.

4. Upon notice issued, defendants no. 1 and 2, i.e. the present appellant and its Controller of examinations, filed a joint written statement taking preliminary objections on maintainability, cause of action, *locus standi*, jurisdiction, non-joinder of parties, the plaintiff not having come to Court with clean hands and due to concealment of material facts.

On merits, it was contended that the date of birth recorded (11.11.1999), was as per the details furnished by the parents of the plaintiff, while admitting him to school and as per the forms filled in by the plaintiff himself, at the time of his examination. Hence, there was no inadvertent

mistake and in any case, the plaintiff had not made any request to the Board for changing his date of birth, which even if it had been made, could not be acceded to “in view of rule applicable”.

5. The school in which the plaintiff was studying, i.e. defendant no. 3, was proceeded against *ex parte*.

6. From the pleadings of the parties, the following issues were framed by the learned Civil Judge (Junior Division), Meham:-

“1. *Whether the applicant is entitled to decree of declaration as well as for mandatory injunction as prayed for? OPP*

2. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*

3. *Whether the plaintiff has no cause of action to file the present suit? OPD*

4. *Whether the plaintiff has no locus standi to file the present suit? OPD*

5. *Relief.”*

7. In support of his case, the plaintiff examined his father (through whom he filed the suit) as PW-1 and one Silak Ram as PW-2, who was stated to be a Computer Statistical Officer in the office of the Civil Surgeon, Rohtak. By way of documentary evidence, the plaintiff tendered his secondary school examination certificate and his birth certificate as Exs. P-1 and P-2 respectively.

8. The defendants did not examine any witness despite opportunity, but tendered one document, i.e. a copy of the bye-laws of the present

appellant-Board, as Ex. D-1.

9. Upon considering the pleadings and arguments and appraising the evidence led before him, the learned Civil Judge found that though the birth certificate relied upon did show the date of birth of the plaintiff to be 11.11.1997 and not 11.11.1999, however what was to be considered, (as per that Court), was as to whether the plaintiff first came to know of his correct date of birth when he received his birth certificate and before that there was no request made by him for correction of any clerical/arithmetical mistake in his school leaving certificate.

10. Thereafter, relying upon a judgment of this Court in Ambika Kaul vs. Central Board of Secondary Education and others (2015) (3) SCT 350, it was held that the plaintiff was not entitled to the declaration claimed.

The passage from the judgment that was relied upon by the learned Civil Judge reads as follows:-

“Registration of Birth and Death Act, 1969, 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.

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.” [Note: The passage is not recorded 'fully accurately' in the judgment of the learned Civil Judge.]

11. The main issue having been decided against the plaintiff, it was recorded that the other issues with regard to maintainability of the suit, cause of action and *locus standi*, were not pressed by the defendants and hence were decided in favour of the plaintiff but with the essential issue having been decided against him, the suit of the plaintiff was dismissed with costs.

12. In the appeal filed by him before the learned first appellate Court, the learned District Judge, Rohtak, after noticing the pleadings, the

issues framed and the evidence led by the parties, at the outset itself held that the case was covered (in favour of the plaintiff) by the judgment in Ambika Kauls' case (supra).

It the writ petition filed, the learned Single Judge, in Ambika Kauls' case, held that if the date of birth was entered at the time when the child obtained admission in the nursery class and thereafter, the same date of birth continued throughout his period of schooling and the certificate issued by the CBSE simply reproduced the date of birth already contained earlier, there would be no scope for a change in the certificate.

However, the Division Bench disposed of the appeals filed before it in Ambika Kauls' case and in the case of Shubham Attri vs. Central Board of Secondary Education and others (LPA No. 373 of 2016), by a common judgment, wherein it allowed the appeal of Shubham Attri, directing the CBSE to alter the date of birth as was given in the birth certificate issued by the Registrar.

It was noticed by the learned first appellate Court (in the present lis), that the said direction had been given by the Division Bench further holding that since the minor had filed the writ petition within three years of attaining majority and had not obtained any benefit of the date of birth recorded in the matriculation certificate and the purpose of filing the suit was only to bring the date of birth recorded in the matriculation certificate to be “in sync” with the date of birth recorded with the Registrar, Birth and Deaths in order to obtain a passport, the benefit would be available to the person.

13. In the present case, since the suit filed by the plaintiff was so filed when he was still a minor and he had not taken any advantage of his date of birth recorded in the matriculation certificate, it was held by the

learned District Judge that the purpose of filing the suit was only to bring the date recorded in the matriculation certificate in tune with the date recorded with the Registrar of Births and Deaths, and therefore, the appeal of the plaintiff deserved to be allowed.

Consequently, the appeal was so allowed and the plaintiffs' suit decreed, with a direction to the first three defendants, i.e. the present appellant-Board, its Controller of examination and the school in which the plaintiff had studied, to correct his date of birth in the certificates issued by them.

14. When this appeal had initially come up for hearing before this Court on 19.05.2016, it had been argued by learned counsel for the appellant that the bye laws of the Board debarred any subsequent change in the date of birth, as was recorded in the certificate, unless it was a typographical/arithmetical error.

This Court has observed at that stage, that before going into the issue of the applicability of the bye-laws of the Board over and above a substantial civil right of a citizen, the evidence led before the courts below, on the basis of which the birth certificate was issued, would need to be examined. Consequently, the records of the courts below had been summoned and upon appraisal of the records, it was seen that nothing adverse could be discerned to the effect that the birth certificate issued by the Registrar of Births and Deaths, was obtained in any surreptitious manner (though no order to that effect is seemed to be recorded).

15. However, learned counsel for the appellant had even at that stage argued, that in **Shubham Attris'** case (supra), it was discussed in the judgment of the Division Bench, that the rule of estoppel would apply to a

student, who after appearing for an examination asks for a correction in his date of birth. It was further contended by learned counsel that the appeal in **Shubham Attris'** case (supra) was allowed only because he had approached the Court within three years of having attained majority and that he sought a correction in the date of birth only because he wished to apply for a passport.

It was then recorded by this Court in its order dated 29.07.2016, that the contesting respondent in the present appeal, (i.e. the plaintiff) had also approached the Civil Court for correction of his date of birth within one year of the certificate having been issued by the appellant-Board, even before he attained majority. Hence, in fact, even at that stage, this Court had observed that there would be no reason to interfere with the judgment of the learned lower appellate Court.

However, learned counsel for the appellant had vehemently argued that a co-ordinate Bench of this Court, in a similar case, where the same Division Bench judgment was relied upon, had dismissed the appeal. He had therefore sought time to obtain a copy of the judgment.

The matter had again been adjourned thereafter, with a copy of the judgment not being available with counsel and on 22.08.2016, learned counsel had relied upon two judgments of co-ordinate Benches of this Court, holding that the date of birth of even a minor cannot be corrected, as per the bye-laws of the appellant-Board, after he has appeared for the examination and a certificate has been issued to him, showing the date of birth as given in the register of the school that he was first enrolled in.

Learned counsel having at that stage very fairly also produced a copy of the judgment of the Division Bench in **Ambika Kauls'** case (supra),

paragraph 42 thereof had been reproduced in the order of this Court, in which it had been specifically held by the Division Bench that though a person is estopped to dispute the date of birth recorded in his matriculation certificate, 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 the present case, the plaintiff having approached the Court within his minority, learned counsel had been asked as to how the aforesaid observations of the Division Bench would apply.

Upon further query of this Court, Mr. Setia had submitted that no evidence was led with regard to the basis of the date of birth of the plaintiff, at the time of entry of the date of birth in the school register. He had, therefore, sought time to verify the same, which this Court observed may be necessary, in view of the fact that if no proof whatsoever with regard to the basis of the date of birth of the plaintiff was produced by his parents at the time of his entry in the school, the minor could not be held to be bound down or forced to suffer for the fault of his parents.

Hence, learned counsel had been given opportunity (even at the stage of second appeal) to determine as to whether any evidence was available to show that the entry in the school register was made on the basis of a certificate of birth.

16. Twice thereafter, learned counsel sought time to obtain any evidence with regard to the aforesaid and on 18.11.2016, after this Court had actually dictated an order of dismissal of the appeal, learned counsel for the appellant-Board sought yet another opportunity, to enquire whether the birth

certificate relied upon by the respondent-plaintiff was a forged document or a genuine one.

Hence, considering that even at this stage if it was shown that the document itself relied upon by the plaintiff was a forged one, which actually should have been verified by the Board at the time when led evidence before the learned Civil Judge, this Court had still granted time to verify that fact and had adjourned the matter for the last time, subject to payment of costs of Rs. 3,000/- by the appellant, to be paid to the Haryana State Legal Services Authority.

17. Pursuant to the order dated 18.11.2016, costs of Rs.3,000/- are stated to have been paid in the Haryana State Legal Services Authority and as per the enquiry made by the appellant-Board, the date of birth certificate submitted by the first respondent has not been found to be forged in any manner.

Hence, learned counsel obviously does not want to press that plea.

18. This Court, on the last date of hearing, had unequivocally expressed its opinion that the right of a minor to repudiate his date of birth on the basis of cogent evidence, (in this case his birth certificate), cannot be taken away from him even as per the Division Bench judgments of this Court cited by the learned counsel, in **Ambika Kaul v. Central Board of Secondary Education and others**, 2015 (3) SCT 350 and **Abhimanyu v. Central Board of School Education** (LPA No.482 of 2015, decided on 21.05.2015).

This was so in view of the fact that in Abhimanyus' case (supra), their Lordships had specifically held as follows:-

“The date of birth given in the Matriculation Certificate which is at variance with the date of birth recorded in the records of Registrar of Births and Deaths can be corrected on the proof of the fact that the date of birth recorded in Matriculation Certificate was not based upon any declaration or a document filed by the parents of the candidate or that the school has not maintained record of admission in proper manner and in no other circumstances.”

19. Hence, obviously, when a minor, within three years of his having attained majority, leads cogent evidence with regard to a wrong date of birth having been entered in the school records on the basis of any statement made by his parents/guardian, in the opinion of this Court, such evidence would need to be taken into account by the Board and the necessary correction made, if the evidence led, in the form of a birth certificate or otherwise, is found to be not ingenuine.

This is for the reason that a civil right inherent in a minor cannot be taken away from him simply because the Board, on the basis of the school records, has entered a date of birth and does not wish to change it thereafter, because of its own byelaws.

20. In fact in this regard, the observations of the Division Bench even in Ambika Kauls' case (supra) need to be referred to, as follows:-

“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 DALBIR SINGH 2015.05.21 17:48 I attest to the accuracy and authenticity of this document High Court Chandigarh LPA No. 1613 of 2014 (O&M) & LPA No. 373 of 2015 (O&M) (28) 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.”

Thereafter, after referring two judgments of the hon'ble Supreme Court in **Darshan Singh** vs. **Gurdev Singh** (1994) 6 SCC 585 and **Bailochan Karan** vs. **Basant Kumari Naik** (1999) 2 SCC 310, it was held as follows:-

“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, 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.”

21. Thus, it is very obvious that the vehement insistence of learned counsel for the appellant, on each successive occasion, that **Ambika Kauls'**

case (supra) wholly covers the case of the respondent-plaintiff against him, is completely misplaced, which had been pointed out to him earlier also by this Court. However, he was obviously under pressure from the Board to continuing arguing despite the observations of this Court and he had been granted time not because of the fact that the case of the respondent-plaintiff was covered against him by the aforesaid judgment, but only to determine even at this stage, whether any fraud had been played in obtaining the birth certificate on the basis of which the correction was sought.

22. When learned counsel was confronted with the observations of the Division Bench again, as to how in fact, even in terms of the said judgment as also the subsequent judgment in Abhimanyus' case (supra), the matter would not be wholly covered in favour of the plaintiff, he could not refute the obvious implication of the ratio of the judgments, to the effect that once a minor approaches the Civil Court for correction of his/her date of birth on the basis of good evidence, within three years of having attained majority and further, the date of birth recorded in his matriculation certificate is not based upon the date of birth recorded in the record of the Registrar of Births and Deaths, in fact, he would be entitled to get such a change effected in the certificate issued by the Board.

23. Therefore, even though learned counsel has now sought to withdraw the appeal at this stage, it is made clear that if on the basis of sound evidence in the form of a genuine birth certificate, the date of birth of a candidate is required to be corrected, the appellant-Board would be bound to do so, if the person seeking such correction approaches before attaining the age of majority, or within three years after having attained it, unless of course the document on the basis of which the change in date of birth is sought, is

found to be ingenuine.

24. Though, in view of the unnecessary wastage of time, in the face of the observations of the Division Bench, otherwise this Court would have been inclined to dismiss the appeal with exemplary costs, however, since costs of Rs. 3,000/- have already been imposed earlier and the counsel for the appellant now seeks to withdraw the appeal, it is dismissed as withdrawn.

December 05, 2016
vcgarg/nitin

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes