

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

RSA No.3985 of 2015 (O&M)

Date of decision:29.07.2016

Ankit Chahal

... Appellant

Vs.

Central Board of Secondary Education and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S.Kharb, Advocate
for the appellant.

Mr. Nitin Kant Setia, Advocate
for respondents No.1 and 2.

Mr. Anil Chawla, Advocate
for respondent No.3.

AMIT RAWAL J. (Oral)

C.M.No.9747-C-2015

For the reasons stated in the application, duly supported by an affidavit, delay of 14 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.3985 of 2015 (O&M)

Appellant-plaintiff is aggrieved of the judgments and decrees of both the Courts below, whereby, suit seeking declaration and mandatory injunction with regard to correction of date of birth certificate, has been dismissed by the trial Court and upheld by the Lower Appellate Court.

Mr. S.S.Kharb, learned counsel appearing on behalf of the

appellant-plaintiff submits that in fact, actual date of birth, according to the birth certificate issued by the Registrar of Births and Deaths is 27.10.1997, whereas, in the school certificate, it has been recorded as 27.10.1998. The suit was filed at the time when the appellant was minor, i.e., 27.08.2014. Both the Courts below have not appreciated the aforementioned fact and thus, limitation would not come in his way. He relies upon the Rules of Central Board of Secondary Education which do not statutorily debar the typographical and clerical mistake. The instant case is a case of such kind, wherein, though the information provided in the school was correct but the school authorities recorded it incorrectly. The occasion arose only when the appellant had to apply for passport. It is in this background of the matter, the aforesaid suit, was filed but both the Courts below have committed illegality and perversity in declining the relief.

During the course of arguments, he relies upon the findings rendered by the Hon'ble Division Bench of this Court in **LPA No.373 of 2015 titled as Shubham Attri vs. Central Board of Secondary Education and others**, wherein, the LPAs filed by others were dismissed, yet the LPA of Shubham Attri was allowed and was granted the relief, therefore, the case of the appellant is also covered by the directions given in the aforesaid LPA.

Mr. Nitin Kant Setia and Mr. Anil Chawla, learned counsel appearing on behalf of respondents No.1 and 2 and 3 respectively submit that CBSE Rules permit the correction of date of birth certificate with regard to clerical and typographical mistake but not change of records, thus,

both the Courts below by relying upon the statutory rules declined the relief. The ratio decidendi culled out by the Hon'ble Division Bench of this Court in **LPA No.1613 of 2014 titled as Ambika Kaul vs. Central Board of Secondary Education and others**, has laid down the law that in such type of cases, the plaintiffs should be estopped to seek change in the date of birth certificate as it is their own information on which the school had recorded the date of birth, therefore, it cannot be brought within the expression “typographical/clerical”. They further submit that findings given in LPA No.1613 of 2014 upholding the aforesaid view, cannot be read in isolation. They further rely upon CWP No.9533 of 2016 titled as Arti Yadav vs. Central Board of Secondary Education and others decided on 12.07.2016 in the lines of ratio decidendi culled out in LPA No.1613 of 2014 and thus, urge this Court that there is no illegality and perversity in the findings rendered by both the Courts below. They further submit that review petition at the instance of the appellant in LPA No.1613 of 2014 was filed, wherein, a request was made for issuing of appropriate directions to the Passport Authorities to issue the passport by taking the date of birth recorded in the birth certificate issued by the Registrar of Births and Deaths and the Division Bench of this Court had given liberty to the Passport Authorities to issue passport to the appellant on the basis of either of the two Certificates, i.e., School Certificate or Date of Birth Certificate.

Mr. Kharb, at this stage submits that at least the aforementioned appeal can be disposed of in terms of the order passed by the Hon'ble

Division Bench in the review petition bearing No.47 of 2015 in LPA No.1613 of 2014 by raising the substantial question of law which reads thus:-

“Whether the appellant/plaintiff can be permitted to seek the change of date of birth in view of the ratio decidendi culled out by the Hon'ble Division Bench of this Court in LPA No.373 of 2015 or LPA 1613 of 2014?

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below.

For the sake of brevity, order dated 03.0-7.2015 passed in review petition No.47 of 2015 in LPA No.1613 of 2014 reads thus:-

“The applicant/appellant is seeking review of the order passed by this Court on 21.5.2015 primarily on the ground that she will not be able to obtain passport with the School Certificate recording her date of birth 04.07.1992, whereas, the Birth Certificate records her date of birth 04.07.1991.

We leave it open to the Passport Authorities to issue passport to the applicant/appellant on the basis of either of the two Certificates as they consider in accordance with law.

Review application stands disposed of.”

The facts aforementioned would reveal that no doubt, appellant-plaintiff had approached the Court during the period of minority and therefore, even the period of 3 years had not elapsed. The ratio decidendi culled out by the Hon'ble Division Bench of this Court vis-a-vis

estoppel, I am of the view that same principles would apply to the present case. The school authorities always record the date of birth on the information provided by the parents of the child and the child had almost spent 10 years in the school. It is very strange that this fact never came to the knowledge of the parents. Thus, appellant cannot seek vindication of his grievance on the basis of the certificate issued by the Registrar of Births and Deaths. However, in peculiar facts and circumstances of the case and as well as fact that in view of the order dated 3.7.2015 passed in review petition, aforementioned, I am of the view that appellant shall be at liberty for issuance of passport by the Passport Authorities by relying upon either of two certificates, i.e., School Certificate or Birth Certificate issued by the Registrar of Births and Deaths.

While upholding the findings rendered by both the Courts below, appeal stands disposed of in the aforementioned terms.

(AMIT RAWAL)
JUDGE

July 29, 2016
savita

Wheather speaking/reasoned	Yes/No
Whether Reportable	Yes/No