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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7480/2016

ROOPREET KAUR

..... Petitioner

Through: Ms. Gurmeet Kaur and Mr. Parminder
Singh Goindi, Advs.

versus

C B S E AND ANR

..... Respondents

Through: Mr. Atul Kumar, Adv. for R1.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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27.02.2017

1. The present petition has been filed by the petitioner with the following prayers:-

“In view of the above it is therefore most respectfully prayed that this Hon’ble Court may be pleased to:-

- i. issue a Writ, Order or Direction in the nature of Mandamus thereby issuing necessary directions to the Respondent No.1/CBSE to make correction in the date of birth of the petitioner as 29-08-1988 in the All India Secondary School Examination Certificate no. D/05/01830/624364 dated 26-05-2005 and Mark sheet bearing No. 520490 dated 26-05-2005.*
- ii. issue a Writ, Order or Direction in the nature of*

Mandamus thereby issuing necessary directions to the Respondent no.1/CBSE to issue fresh All India Secondary School Examination Certificate and Mark sheet with the corrected date of birth of the Petitioner;

iii. Issue any other writ, order or a direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and;

iv. Any other or further order(s) which this Hon'ble Court may deem fit in the facts and circumstances of the case in favour of the petitioners in the interest of justice."

2. It is the case of the petitioner and also contended by the learned counsel for the petitioner that she was born on August 29, 1988 at Military Hospital, Bareilly Cantt. Her birth was duly registered on September 13, 1988 by the Registrar of Births & Deaths, Government of Uttar Pradesh and a certificate in that regard was issued certifying the date of birth as August 29, 1988. The petitioner started her schooling and education with Loreto Convent School, Delhi Cantt. where she studied upto Class V. Thereafter, she was admitted to Ashok Hall Girl's Higher Secondary School, Kolkata where she did her Class X. Thereafter, she was admitted to Army Public School, Kolkata where she studied in Class VII. In all these Schools her correct date of birth is recorded as August 29, 1988 in terms of the application submitted by her parents in the aforesaid Schools.

3. It is contended by the learned counsel for the petitioner that in the year 2001 when the father of the petitioner was transferred from Kolkata to Delhi, he applied for transfer of the petitioner from Army Public School, Kolkata to Army Public School, Delhi. In the year 2005, the petitioner appeared in Class X board examination conducted by the Central Board of Secondary Education respondent No.1 and she was issued a certificate and mark sheet in the month of March, 2005. He would state, that thereafter during the year 2007, the petitioner appeared for her Class 12th examination from the same School. It was only due to an inadvertent clerical error, the date of birth of the petitioner was wrongly entered in the transfer form of Army Public School, Kolkata as August 29, 1989 and on subsequent admission in Army Public School, Delhi, her date of birth was recorded as August 29, 1989 instead of August 29, 1988 and the same was reflected in the CBSE certificate, which was issued in the year 2005. The petitioner realised the clerical mistake in her date of birth as recently as February, 2016 while she was collecting all necessary documents for the purpose of her passport renewal, which was getting expired in 2017.

4. Learned counsel for the petitioner states that the petitioner had no reason to check the aforesaid certificate issued by the CBSE in the light of

her date of birth. The petitioner immediately contacted the Principal of all her Schools to issue her letter/certificate certifying her date of birth based on the documents available with them. The Principal of the Schools viz. Loreto Convent School, Ashok Hall Girls' Higher Secondary School and Army Public School, issued letters dated February 29, 2016, March 15, 2016 and March 19, 2016 respectively certifying that the date of birth of the petitioner as per the records maintained by them is August 29, 1988.

5. The Principal of Army Public School, New Delhi vide letter dated March 22, 2016 certified that her date of birth as per the record is August 29, 1989. Thereafter, the petitioner immediately approached the CBSE seeking rectification in her date of birth in the certificate and mark sheet and thereby issuing fresh certificate and mark sheet with her correct date of birth as August 29, 1988. However, the respondent rejected the said request of the petitioner as time barred. It is contended that the petitioner had earlier filed Writ Petition (Civil) No. 5229/2016 before this Court, which was dismissed on May 31, 2016 with observation that the same is premature but the petitioner was given liberty to file representation with the respondent within two weeks which was to be disposed of within six weeks, which has been not replied even after eight weeks.

6. The learned counsel for the petitioner would also contend that inaction on the part of the respondents to correct the date of birth of the petitioner is causing difficulty inasmuch as, in view of the discrepancy, she is not being issued Visa to join her husband in Germany by the German Embassy. According to him, the marriage of the petitioner is at stake. He states, that this Court is not powerless to direct the respondents to correct the date of birth of the petitioner. He would rely upon the following judgments in support of his contention:-

(i) CWP No. 4767/2012 Parveen Malik v. Central Board of Secondary Education (CBSE) and Others decided on February 5, 2013;

(ii) CWP No. 7623/2003 Km. Para v. Director, Central Board of Secondary Education decided on April 30, 2004.

7. On the other hand, the respondent No.1 has filed its affidavit, wherein it is contended that the byelaws of the respondent No.1 do not permit change of date of birth once it is recorded in the records of the respondent No.1. The relevant examination bye-law 69.2 regarding change/correction as regards the date of birth in the certificates and marks statement issued by the respondent is reproduced as under:-

69.2 Change/Correction in Date of Birth

(i) No change in the date of birth once recorded in the Board's records shall

be made. However, corrections to correct typographical and other errors to make the certificate consistent with the school records can be made provided that corrections in the school records should not have been made after the submission of application form for admission to Examination to the Board.

(ii) Such correction in Date of Birth of a candidate in case of genuine clerical errors will be made under orders of the Chairman where it is established to the satisfaction of the Chairman that the wrong entry was made erroneously in the list of candidates/application form of the candidate for the examination.

(iii) Request for correction in Date of Birth shall be forwarded by the Head of the School alongwith attested Photostat copies of :

(a) application for admission of the candidate to the School;

(b) portion of the page of admission and withdrawal register where entry in date of birth has been made alongwith attested copy of the Certificate issued by the Municipal Authority, if available, as proof of Date of Birth submitted at the time of seeking admission; and

(c) the School Leaving Certificate of the previous school submitted at the time of admission.

(iv) The application for correction in date of birth duly forwarded by the

Head of school alongwith documents mentioned in byelaws 69.2(iii) shall be entertained by the Board only within one year of the date of declaration of result. No correction whatsoever, shall be made on application submitted after the said period of one year.

8. He would contend that in terms of the above byelaws the date of birth cannot be changed once it is recorded in the records of the respondent No.1. The date of birth of a candidate can only be corrected. The said correction as per the byelaws is restricted to correct only typographical and other errors to make the certificate consistent with the school records. The byelaws also provide that the corrections in the school records should not have been made after the submission of the application form for admission to examination of the respondent No.1. The said correction can be made within a period of one year from the date of declaration of result. The corrections as regards the date of birth can only be made when the candidate submits a request through the concerned school accompanied with copies of all the documents mentioned in the byelaws. He would state, the basic record regarding the particulars of a candidate who appears for the examinations conducted by the respondent No.1 is with the concerned school where the candidate was studying. The petitioner had appeared for the All India Secondary School

Examination 2005 conducted by the respondent No.1 through the respondent No.2. The basic record of the petitioner is with the respondent No.2 from where the petitioner had appeared for the examinations conducted by the respondent No.1. He would state the father of the petitioner had filled the Registration Form of the petitioner in July, 2001 for getting the petitioner admitted in Class VII in the Respondent No.2. The father of the petitioner had filled the date of birth of the petitioner as 29th August, 1989 in the said form. The father of the petitioner had thereafter filled in the admission form of the petitioner on 30th July, 2001. The father of the petitioner had again filled the date of birth of the petitioner as 29th August, 1989 in the admission form. It is further his contention that the petitioner was admitted in the respondent No.2 on 31st July, 2001 in Class VII. The petitioner was allotted admission No.2001/974 by the Respondent No.2. The respondent No.2 had in its Admission and Withdrawal Register mentioned the date of birth of the petitioner as 29.08.1989. The entries in the Admission and Withdrawal Register of the school are made on the basis of the particulars filled by the parents of the candidate in the admission form. He would submit that the petitioner appeared for the All India Secondary School Examination, 2005 conducted by the Respondent No.1. In the list of candidates submitted by

the respondent No.2 for the All India Secondary School Examination, 2005, which also bears the signatures of the petitioner in respect of the entries of her particulars, the date of birth is recorded as 29.08.1989. He would contend the petitioner wants to change her date of birth in the records of the respondent no.1 and make it different from what has been recorded by the respondent no.2 from where the petitioner had appeared for the Class X examination. The date of birth as mentioned in the certificate issued by the respondent No.1 is the same which is mentioned in the records of respondent No.2 from where the petitioner had appeared for the Class X examination. The petitioner had appeared in the examination in the year 2005. The examination byelaws of the respondent no.1 do not permit change in date of birth after the submission of the examination form. The date of birth of the petitioner in the records of the respondent No.1 thus cannot be changed from 29th August, 1989 to 29th August, 1988 in view of the examination byelaws mentioned above. He would further state, the date of birth of the petitioner has been recorded as 29th August, 1989 since July 2001 when the Registration Form of the petitioner had been filled by her father. The petitioner studied in the respondent No.2 from July, 2001 to March, 2007. The respondent no.2 had issued a certificate dated March 22, 2016 to the

petitioner, wherein the date of birth of the petitioner is mentioned as 29th August, 1989. According to Mr. Kumar, the petitioner must have filled her date of birth as 29th August, 1989 whenever she had applied for further studies after the year 2005. He would state, the respondent no.1 had pursuant to the order dated May 31, 2016 passed by this Court in W.P.(C) No. 5229/2016 passed an order on September 27, 2016 and the same was sent to the petitioner. He would state, in view of the above facts and the byelaws of the respondent no.1, the date of birth of the petitioner is not liable to be changed in the records of the respondent No.1 and in the certificate and marks statement issued to the petitioner by the respondent no.1 and the petitioner is not liable to be granted any of the reliefs as claimed in the writ petition. He would rely upon the judgment of this Court in the case of *Sahil Tandon (Minor) through his Natural Guardian-Father v. Central Board of Secondary Education and Ors W.P.(C) No. 6042/2016 decided on November 28, 2016* in support of his contention.

9. Having heard the learned counsel for the parties, there is no dispute that in the year 2001, when the admission form, admitting the petitioner in Army Public School was filled by the father of the petitioner, the date of birth was written as August 29, 1989. The said particular remained in the

school records of the Army Public School since then and during the interregnum the petitioner had appeared in the 10th and 12th Class examination in the year 2005 and 2007 respectively and the certificate issued to the petitioner in 2005 Annexure P-5 (page 33) also depicts the date of birth of the petitioner as August 29, 1989. Since then, 11 years have elapsed and no attempt to seek correction was made by the petitioner or by her parents.

10. That apart, Mr. Atul Kumar is right in relying upon the Army Public School document at page 19 of the counter-affidavit, which depicts the particulars of the petitioner and also the petitioner having put her signature with regard to the said particulars.

11. The law is well settled. The issue of change of date of birth or change of name is no more *res integra*. I would like to refer to the judgment of the Supreme Court in the case reported as **(2003) 12 SCC 408 Board of Secondary Education of Assam v. Md. Sarifuz Zaman and others**, wherein the Supreme Court dealing with an issue that the respondent, who passed the matriculation examination conducted by the Board of Secondary Education, Assam, in the year 1991; Higher Secondary Examination and then the B.Sc. examination in the year 1998 had on October 12, 1999, moved an

application to the Board complaining that his date of birth was wrongly mentioned in the school records as May 30, 1974, while his actual date of birth was August 16, 1975. The mistaken date of birth, as forwarded by the school, had crept in, in the admit card issued by the Board. The student pleaded that he did not realize the importance of the correct date of birth being entered in the school records, and therefore, he did not also realize the implications thereof until he was prompted in moving the application. The application moved by the respondent to the Principal of the school, was forwarded to the Board. The Principal indicated that the age of the respondent was entered as August 16. 1975 in the admission register and other school records, but it was by mistake that while filling the form of the Board examination, the date of birth was wrongly entered as May 30, 1974. The Principal described the mistake as ‘clerical’ and recommended for its correction. As the Board did not take any decision on the application, the respondent filed a writ petition.

The Board relied upon Regulation 8 of the Regulations for Conduct of Examinations by the Board framed in exercise of the powers conferred by Section 24 of the Assam Secondary Education Act, 1961 and submitted that an application moved beyond three years from the date of issuance of

certificate by the Board was not liable to be entertained. The plea found favour with the High Court resulting in dismissal of the writ petition. A writ appeal was preferred by the respondent. The Division Bench allowed the appeal, set aside the judgment of the learned Single Judge and allowed the relief sought for by the respondent by issuing a writ of mandamus to the Board. Even though before the Supreme Court, the Board had submitted that it is not interested in nullifying the relief allowed to the two respondent, but it was nevertheless interested in having the legal position settled. The Supreme Court reproduced Regulation 8, which is to the following effect:-

"8. CORRECTION OF DATE OF BIRTH. NAME, TITLE, ETC.:

(a) Date of Birth : Once the date of Birth is reported by the Heads of the Recognised High School High/Madrassa/Higher Secondary School to the Board in the prescribed statement of candidates along with the application for the Examination and entered in the records of the Board, it will not be altered except on grounds of wrong calculation or clerical error for which an application with the recommendation of the Head of the institute will have to be made to the Board through Inspector of Schools concerned who will verify the School records and submit report to the Board. The Secretary of the Board may pass orders for correction if he is satisfied that there was wrong report of the date of Birth due to wrong calculation or clerical error. Provided that the Date of birth as 30th February, 31st April, 31st June, 31st September, 31st November and also 29th February excepting that of a leap year be uniformly corrected as the last date of Month without any reference

to School.

If any inaccuracy creeps in at the stage of writing the certificate only, all other prior documents being correct in all respects, correction in the Certificate will be admissible if the application is received within 3 years from the date of issue of certificate by the Board with necessary fees.

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12. Further, the Supreme Court in paras 9, 10, 12 and 13 has held as under:-

“9. Undoubtedly, the general power conferred on the Board by Section 24(1) of the Act is for the purpose of carrying out the provisions of the Act. Under Section 24(2), clause (d) provides the subject, on which Regulations may be framed, as conducting examinations and publishing the results. Clause (g) provides the subject as 'conditions under which candidates shall be admitted to the examinations of the Board. It is not disputed, and could not have been, that the application form of a candidate seeking to participate in an examination held by the Board has to be forwarded by the educational institution wherein he is studying. The application has to be duly, truly and fully filled in. One of the informations required to be given is the age and date of birth of the students. It is common knowledge that the certificate issued by the Board either at the matriculation examination or at the higher secondary level examination mentions the date of birth of the student. Such certificate is invariably accepted as a valuable piece of evidence in proof of the date of birth and age

of the applicant throughout his career ahead. The courts of law attach a high degree of probative value to the certificate and in the absence of anything to the contrary, the date of birth, as entered in the certificate, is accepted almost as binding. On the result of the examinations conducted by the Board having been published the successful candidates are awarded certificates. The name, father's name, date of birth the institution in which the student has studied and such other particular as are incorporated in the certificate are based on the Information made available by the contents of the application form which is scrutinized, verified and forwarded by the institution, in which the student has studied. All these particulars carry with them a prima facie guarantee of correctness inasmuch as such particulars in the record of the institution are furnished by the applicant himself and the applicant himself fills in and subscribes to the application seeking entry in the examination conducted by the Board. It is difficult to assume that such particulars would be false or incorrect so far as the applicant is concerned. At the same time, this procedure becomes a part of the process of 'conducting examinations and publishing the results' as also the 'conditions under which the candidates shall be admitted to the examinations of the Board' the two subjects covered by clauses (d) and (g) of sub-Section (2) of Section 24 of the Act, apart from the generality of the power conferred by sub-Section (1) of Section 24. It cannot, therefore, be contended that the matter relating to certificates and as to correction of

any entry made therein does not fall within the purview of the power to make Regulations conferred on the Board.

10. Nobody can claim a right to have corrected an entry in a certificate solemnly issued by an educational institution that too the one enjoying the status of a statutory Board under the Act. The right of the applicant to have an error or mistake corrected is accompanied by a duty or obligation on the part of the Board to correct its records and the certificate issued by it. Not only it is a corresponding duty or obligation, it has also to be perceived as a power exercisable by the Board to correct an entry appearing in the certificate issued by it. People, institutions and government departments etc.- all attach a very high degree of reliability, near finality, to the entries made in the certificates issued by the Board. The frequent exercise of power to correct entries in certificates and that too without any limitation on exercise of such power would render the power itself arbitrary and may result in eroding the credibility of certificates issued by the Board. We therefore, find it difficult to uphold the contention that the applicants seeking correction of entries in such certificates have any such right or vested right.

12. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone. There ought to be a limit of time by which human affairs

stand settled and uncertainty is lost. Regulation 8 confers a right on the applicant and a power coupled with an obligation on the Board to make correction in the date of birth subject to the ground of wrong calculation or clerical error being made out. A reasonable procedure has been prescribed for processing the application through Inspector of Schools who would verify the school records and submit report to the Board so as to exclude from consideration the claims other than those permissible within the framework of Regulation 8. Power to pass order for correction is vested on a higher functionary like Secretary of the Board. An inaccuracy creeping in at the stage of writing the certificates only, though all other prior documents are correct in all respects, is capable of being corrected within a period of three years from the date of issuance of certificate.

13. Three years period provided by the Regulation, is a very reasonable period. On the very date of issuance of the certificate the concerned student is put to notice as to the entries made in the certificate. Everyone remembers his age and date of birth. The student would realize within no time that the date of birth as entered in the certificate is not correct if that be so once the certificate is placed in his hands. Based on the certificate the applicant would seek admission elsewhere in an educational institution or might seek a job or career where he will have to mention his age and date of birth. Even if he failed to notice the error on the date of issuance of the certificate, he

would come to know the same shortly thereafter. Thus, the period of three years, as prescribed by Regulation 3, is quite reasonable. It is not something like prescribing a period of limitation for filing a suit. The prescription of three years is laying down of a dividing line before which the power of the Board to make correction ought to be invoked and beyond which it may not be invoked. Belated applications, if allowed to be received, may open a Pandora's box. Records may not be available and evidence may have been lost. Such evidence-even convenient evidence- may be brought into existence as may defy scrutiny. The prescription of three years bar takes care of all such situations. The provision is neither illegal nor beyond the purview of Section 24 of the Act and also cannot be called arbitrary or unreasonable. The applicants seeking rectification within a period of three years form a class by themselves and such prescription has a reasonable nexus with the purpose sought to be achieved. No fault can be found therewith on the anvil of Article 14 of the Constitution.”

13. On a similar issue but with regard to change of name, this Court in ***Ms. Jigyasa Yadav (Minor) (Through Guardian/Father Mr. Hari Singh) v. Central Board of Secondary Education and Ors. W.P.(C) No. 3774/2010 decided on December 20, 2010***, in paras 18, 21 and 22 held as under:-

“18. Moreover, in our opinion, even if the Regulations permitted change of names of parents, this is not a case where

the change of name should be allowed as the parents have repeatedly filled up the forms themselves and they alone are liable for the error/mistake, if any.

21. Even if one were to apply the aforesaid test one finds that the respondent no. 1 essentially records what has been mentioned in the school records consistently and that too, upto Class X, that means, for more than 10 years the child and/or her parents have the liberty to rectify the record. Consequently, we are of the opinion that the impugned Bye-law is perfectly reasonable.

22. Moreover, we are of the view that the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to take a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice - as contended by

the respondent no. 1 in its counter affidavit.”

14. In another judgment, the Division Bench of this Court in the case reported as **2011 (180) DLT 1 Bhagwat Dayal v. CBSE**, in para 8, has held as under:-

“8. In the present case, class 10 certificate is dated 3rd June, 2000. Thereafter, the appellant had appeared in the All India Secondary School Certificate Examination in the year 2003. At that time also, the appellant did not challenge or ask for change of the date of birth or the name of his father. The plea taken by the appellant that he could not observe the aforesaid mistake till January, 2010 when the appellant was appearing in Civil Services Examination has been rightly not accepted. The appellant had obtained a certificate from Health Department of Government of Haryana on 2nd February, 2010 and then had approached CBSE and his school. Learned single judge has further observed that notices were issued to three schools where the appellant had studied. One school had stated that records were not available; another school had stated that no student by the appellant's name was enrolled with them and the third school where the appellant was studying when he had appeared in 10th class examination, had enclosed copy of admission form dated 21st April, 1999, extract of the admission withdrawal register and the transfer certificate dated 31st March, 1999 issued by his previous school. In these documents, the date of birth was recorded as 18th March, 1984 and not 18th March,

1985. The appellant's father's name was mentioned as Bhim Singh and not Bhim Sain.”

15. This Court relying/following the judgment in the case of ***Bhagwat Dayal (supra)*** had in the case of ***Sahil Tandon (supra)*** rejected the writ petition. Noting the above position of law, suffice to state that the date of birth in the certificate issued by the CBSE is on the basis of the information given at the time of her admission in Army Public School as August 29, 1989. That date of birth continues to be in the records till date. No attempt was made by the petitioner or her parents to get the same rectified in the School records. The certificate issued by the CBSE was in the year 2005. Even thereafter till 2016, no attempt has been made for change.

16. The plea of the learned counsel for the petitioner that there is a discrepancy between the birth certificate and the certificate issued by the CBSE does not appeal the Court. Even the plea that because of the discrepancy, the Visa is not being issued, surely would not be a ground for this Court to give direction for correction of date of birth, more particularly keeping in view the byelaws, as referred to by the respondent No.1 in their affidavit and the position of law. In view of the judgments of the Supreme Court and this Court as noted above, the reliance placed by the learned counsel for the petitioner in the case of ***Parveen Malik (supra)***, would have

no applicability. I do not see any merit in the petition. The same is dismissed.

V. KAMESWAR RAO, J

FEBRUARY 27, 2017/ak