

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

CWP No. 2096 of 2018 (O&M)

Date of Decision: 16.03.2018

MANSI MUDGIL

..... Petitioner

V/s.

CENTRAL BOARD OF SECONDARY EDUCATION *.....Respondent*

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: Mr. Gopal Sharma, Advocate
for the petitioner.

Mr. Nitin Kant Setia, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J. (Oral)

This petition is filed for seeking a writ in the nature of mandamus for directing the respondent to correct the date of birth of the petitioner in her matriculation certificate on the basis of birth certificate issued to her by the competent authority under the provisions of the Registration of Births and Deaths Act, 1969 (hereinafter referred as 'the Act').

In brief, the petitioner passed her secondary school examination from CBSE in the year 2001. She was a student of MLS DAV Public School, Narnaul, District Mahendergarh. Her date of birth was mentioned in the School Certificate as 24.11.1985. The petitioner got married in the year 2013. Her husband has got an assignment in Germany, she wanted to accompany him and she has to apply for the Visa. At Since, there is a requirement to attach the birth certificate, therefore, the petitioner obtained her birth certificate from the Registrar (Births and Deaths) Municipal Corporation, Gurugram and found that her date of birth has been mentioned in the birth

certificate as 24.11.1984 instead of 24.11.1985. The petitioner has otherwise obtained Adhar Card with the correct date of birth of 24.11.1984. Be that as it may, realizing the mistake in the matriculation certificate, the petitioner approached the CBSE with a representation for seeking correction in the date of birth from 24.11.1985 to 24.11.1984 so that she may be in a position to apply for the Visa to the German Embassy otherwise there was an anomaly in her matriculation certificate about her date of birth which was not in consonance with the birth certificate issued under the Act. The representation of the petitioner remained pending with the CBSE, therefore, present petition has been filed.

Learned counsel for the respondent has submitted that he does not want to file any reply and has relied upon the Examination Bye Law No. 69.2 of the CBSE as per which there is a limitation provided for seeking such type of correction i.e. a period of one year from the date of declaration of the result. It is, thus, submitted that the petitioner might be having a right but lost the remedy after the expiry of one year after the declaration of the result of her matriculation examination.

On the contrary, learned counsel for the petitioner has relied upon a decision of this Court rendered in CWP No. 8603 of 2016 titled as Shifa Chawla Vs. The Central Board of Secondary Education and others, decided on 18.05.2017, in which similar controversy was there because in that case also there was an error in recording of year of birth otherwise month and date were similar. In the present case also, there is a dispute about the year of birth otherwise date and month is similar as the petitioner has

inadvertently mentioned before the CBSE that she was born on “24.11.1985” whereas she was actually born on “24.11.1984”.

The petitioner has further relied upon an order passed by this Court in CWP No. 21287 of 2016 titled as Manthan Chhabra Vs. Central Board of Secondary Education and another decided on 09.03.2017 in which direction was issued to by this Court to the CBSE to consider the case of the petitioner for correction of date of birth in the matriculation certificate and to issue a fresh certificate thereafter. He has also referred to a decision rendered by the Gauhati High Court in the case of Akhendra Garg Vs. Central Board of Secondary Education and another; 2014 (31) SCT 853 in which the Court has held that if there is a conflict between statutory provisions and bye laws, the statutory provision would prevail.

Learned counsel for the petitioner has submitted that the statutory provision would be the provisions of the Act under which the birth certificate was issued and therefore, the said birth certificate would prevail over and above the date mentioned in the matriculation certificate and in this regard, he has further referred to a judgment of division bench of this Court rendered in the case of Resham Singh Vs. Union of India and another; 2008(1) RCR (Civil) 131 in which it has been held that if there is a conflict between the date of birth recorded in birth certificate issued by the Registrar of Births and Deaths and entry of birth in School leaving certificate, then the entry in birth certificate would prevail.

Interestingly, in this case, the petitioner has already obtained Adhaar Card in which her date of birth is mentioned as 24.11.1984. The petitioner would face difficulty throughout if her date of birth in the

matriculation certificate would not match with the date of birth mentioned in the Adhar Card. The petitioner has definitely made a mistake at the time when her date of birth was recorded in the School though, her correct date of birth which has been mentioned on the birth certificate is 24.11.1984. I am also impressed by the fact that the registration of the date of birth of the petitioner in the birth certificate was got done on 26.11.1984 i.e. 2 days after her birth. Therefore, there is no chance of any manipulation in the date of birth of the petitioner which is recorded in the birth certificate. Had the date of birth been registered now for the purpose of obtaining birth certificate then the matter would have altogether different because then the Court may, for a moment, think that the action of the petitioner is after thought but since, the date of birth was registered just after two days from the date of birth of the petitioner, it gives credence to the fact that she was actually born on 24.11.1984.

The only hindrance before the petitioner is the period of limitation provided in Clause 69.2 (iv) of the Examination Bye Laws of the CBSE on the basis of which learned counsel for the respondent has submitted that a direction cannot be given in favour of the petitioner. In this regard, the petitioner has relied upon a decision of the Kerala High Court rendered in the Case of Arun Vs. Central Board of Secondary Education ; 2010(126) FLR 94, in which it has been held that the period of limitation provided in Clause 69.2 (iv) for making the application for correction in date of birth is only for the administrative convenience alone and is not the period of limitation to bar the remedy as provided under the Limitation Act, 1961.

Thus, keeping in view the aforesaid facts and circumstances, am of the considered opinion that the petitioner is faced with a problem which has to be addressed and hence, the present petition is hereby disposed with a direction to the respondent to consider the application of the petitioner which is lying pending with it, within a period of 15 days from the date receipt of certified copy of this order and after correcting her date of birth in the matriculation certificate, issue the same to her within a period of 15 days thereafter.

March 16, 2017

Ess Kay

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking / reasoned	:	✓ Yes / No
Whether Reportable	:	✓ Yes / No