

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

**RSA No.6310 of 2016 (O&M)
Date of Decision:07.12.2018**

Agastya Vashishth

...Appellant(s)

Versus

CBSE and another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Kamal Sehgal, Advocate for the appellant.
Mr.Naveen Chopra, Advocate for respondent No.1.
Mr.Pritam Singh Saini, Advocate for respondent No.2.

ANIL KSHETARPAL, J.

CM-16560-C-2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 9 days in refiling the appeal is condoned.

CM stands disposed of.

Main case

The plaintiff-appellant is in the regular second appeal against the judgments passed by the courts below.

The plaintiff is seeking correction of date of birth from 1.8.1995 to 16.2.1995 on the basis of record of Births and Deaths, maintained by the Municipal Authorities. Prayer is also for adding surname with the name of his parents.

Learned counsel for the appellant has drawn attention of the Court to para 14 of the judgment passed by the learned first appellate court, wherein it has been found by the court that the correct date of birth of the

plaintiff is 16.2.1995, however, the court dismissed the case on the basis of a judgment passed by Division Bench of Delhi High Court as well as single Bench of this Court in **Ambika Kaur Vs. Central Board of Secondary Education and others, 2015 (1) SLR 229.**

It is not in dispute that the aforesaid judgment passed by Single Bench of this Court in Ambika Kaul's case (supra) has been over ruled by Division Bench of this Court in the case with same title on the preposition of law in the case of **Shubham Attri Vs. Central Board of Secondary Education and others**, while deciding **LPA No.313 of 2015.**

No doubt, on facts, LPA filed by Ambika Kaul was dismissed. The Division Bench of this Court has held that the correction as contemplated under Bye-laws 69.2 of the CBSE is only with respect to correction of the clerical mistake and such provision does not authorise any person to seek correction of date of birth as mentioned in the Registers of Registrar, Births and Deaths. The relevant discussion on this aspect as well as on the aspect of limitation is contained in paras 39 to 42 which are extracted as under:-

“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.

The other question which may arise is that the date of birth was given in the school records by the parents of a child when he was minor, therefore a minor on attaining the date of majority can dispute the date of birth given in the matriculation certificate.

Section 6 of the Limitation Act, gives a right to the person suffering from legal disabilities including a minor to assert his rights after the cessation of such disability. The right to seek correction in the actual date of birth on the basis of certificate issued by the Register, Births and Deaths, is not free from doubt after long years on the basis of rule of estoppel, but for the purposes of the present appeals, we will assume that a person has a legal right to seek correction of his date of birth on attaining the majority.

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 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.”

This Court is bound by the judgment passed by the Division Bench of this Court. Still further, the learned first appellate court, as a matter of fact, has found that the correct date of birth of the plaintiff is 16.2.1995 on appreciation of evidence. Such finding is neither shown to be incorrect nor perverse.

It is not in dispute that the present suit was filed within three years from the date of attaining majority.

In view of the aforesaid discussion, the regular second appeal is allowed. The judgments and decrees passed by the courts below are set aside. A direction is issued to the Central Board of Secondary Education as well as to the Municipal Committee to carry out necessary correction, as prayed for.

Pending application(s), if any, shall also stand disposed of, in terms thereof.

07.12.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No