

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

RSA No. 500 of 2018(O&M)

Date of Decision:18.12.2018

Sushma

.....Appellant

Versus

Central Board of Secondary Education

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rohit Rana, Advocate
for the appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 07.10.2016, passed by the learned Additional Civil Judge (Sr. Division), Karnal, as well as judgment and decree dated 12.12.2016, passed by the learned District Judge, Karnal, whereby her suit for declaration for correction of date of birth as well as issuance of mandatory injunction directing the defendant-respondent to correct her date of birth in Secondary School Examination certificate has been dismissed.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit as above with the averments that she was born on 05.08.1994 at Village Gudha, District Karnal. She was admitted at Arya Senior Secondary School, Gharaunda. Date of birth of the plaintiff was however entered wrongly as 20.05.1995 instead of 05.08.1994 in the form of examination form of her secondary class i.e. Matric. Plaintiff obtained her birth certificate from the concerned authorities for the purpose of obtaining a passport and than realised about the wrong entry of her date of birth in the school certificate. Despite request, defendant-respondent refused to correct the date of birth in the records. Hence the suit was filed.

Defendant-respondent-CBSE, contested the suit. Various preliminary objections were raised. Averments on merits were denied. It was specifically pleaded that the suit was barred by limitation. Plaintiff had cleared her secondary examination in the year 2011. Her date of birth was recorded as 20.05.1995. She failed to approach the Court within three years from attaining majority. Furthermore, date of birth of the plaintiff was recorded according to the particulars furnished by her parents at the time of her admission. Moreover, at the time of the secondary school examination, concerned school of the plaintiff supplied a list of the candidates, along with relevant particulars including their date of birth. Particulars of the plaintiff were also supplied by the school. The same was duly signed by the plaintiff and countersigned by the Principal/concerned officer. Dismissal of the suit was thus prayed for.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to decree for declaration with consequential relief of mandatory injunction, as prayed for?OPP
2. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD
3. Whether the suit is not legally maintainable in the present form?OPD
4. Whether the plaintiff has concealed true and material facts from the Court?OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act conducted?OPD
6. Whether the plaintiff has no cause of action to file the present suit?OPD
7. Whether the Court has no jurisdiction to try and present suit?OPD
8. Whether the suit is barred by limitation?OPD
9. Relief.

Both the parties led evidence in support of their respective

stands.

Learned tribunal on considering the facts and circumstances of the case as well as the evidence on record, dismissed the suit filed by the plaintiff while observing that the present suit has been filed after expiry of three years of attaining majority. Therefore, she has no right to seek correction in the date of birth on the basis of a certificate issued by the Registrar, Births and Deaths, Karnal.

Appeal filed by the appellant-plaintiff was also dismissed by the learned District Judge, Karnal, vide judgement and decree dated 12.12.2016.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant vehemently argues that both the learned Courts below have erred in dismissing the suit filed by the plaintiff. Her date of birth is 05.08.1994 as per the birth certificate (Ex.P-1) issued by the Registrar Births and Deaths, Karnal. It is submitted that manifest injustice shall be caused to the appellant in case the present appeal is not allowed. It is only after obtaining the birth certificate from the concerned authority for the purpose of obtaining her passport that the plaintiff came to know about the wrong entry of her date of birth in the educational testimonials. Therefore, it has been wrongly held by the learned Courts below that the suit of the plaintiff is barred by limitation or estoppel. Furthermore, the appellant, it is contended is not seeking any kind of benefit by such correction as she does not gain anything by claiming herself to be older than as reflected in the matriculation certificate. It is thus prayed that this appeal be allowed and both the judgements and decrees passed by the

learned Courts below be set aside. Consequently, suit filed by the plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

It is not in dispute that date of birth of the appellant is recorded as 20.05.1995 in the Senior Secondary School Examination certificate. Doubtlessly, such entry has been recorded on the basis of the information duly furnished by the parents of the appellant at the time of her admission in school. Furthermore, at the time of examinations, list of the candidates along with their details/particulars, duly signed by the plaintiff as well as the Principal of the school/authorised signatory was sent to the defendant. To say that the appellant came to know about her correct date of birth only in the year 2016 is indeed farfetched and unjustified. Mere fact that with the correction as sought for, the appellant would be claiming herself to be older, cannot be a ground to interfere in favour of the appellant.

Learned Courts below have rightly relied upon decision dated 21.05.2015 of a Division Bench of this Court in **Ambika Kaul Vs. Central Board of Secondary Education and others, 2015(3) Law Herald 2181**, wherein it is specifically observed that a birth certificate is a public record of birth and death and must prevail over matriculation certificate issued by the school authorities, but, the issue required to be examined is that though the date of birth recorded in the matriculation certificate is at variance with the date of birth as recorded in the Registrar Birth and Death, whether such a person is entitled to seek correction in the matriculation certificate while relying upon the birth certificate. It was specifically observed that such a

person is estopped from disputing the entry in the matriculation certificate which forms a basis of employment in public service in terms of relevant recruitment rules. Though, in the present case, the appellant may not be deriving any benefit inasmuch as she claims to be older, the ratio of the judgment dated 21.05.2015 clearly debars any relief in favour of the appellant. This Court in Ambika's case (Supra), has specifically observed as under:-

“[38] On the basis of the judgments referred to above, it can be safely concluded that entry from the office of the Registrar Births and Deaths carries a presumption of correctness being maintained by a public office in discharge of the official duties. But even though the date of birth is recorded differently in the certificate of birth than in the matriculation certificate, the rule of estoppel will apply. No person will be entitled to dispute the same under the guise to correct the mistake in the entry of date of birth in the matriculation certificate. He has taken admission in the school on the basis of a given date of birth and qualified the same. It will be unreasonable to infer that the candidate or his parents, who admitted the child to the school, were not aware of the correct date of birth. The rule of estoppel debars the candidate or a person to dispute the date of birth given in the matriculation certificate if it is not in sync with the certificate issued by the Registrar of Births & Deaths.

[39] 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.

[40] 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.

[41] 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.

[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 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.

Xxxx xxxx xxxx xxxx

[45] 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, no 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.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 07.10.2016 and 12.12.2016 passed by the learned Civil Judge (Sr. Division) Karnal and learned District Judge, Karnal, respectively, are upheld.

There is a delay of 90 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in-filing this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

18.12.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.