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

Date of decision: 20th December, 2018

+ W.P.(C) 9434/2017

SPRIHA CHOUDHARY Petitioner

Through: Mr. Sanjay Sharawat with
Mr. Divyank Rana, Adv.

versus

CENTRAL BOARD OF SECONDARY EDUCATION
& ANR Respondents

Through: Mr. Ashok Kumar, Adv. for
CBSE

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G E M E N T (O R A L)

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20.12.2018

1. The controversy in issue in this writ petition is short and, detailed arguments of both sides having been heard, and with consent of parties, the writ petition is being decided finally.

2. The petitioner was born on 30th March, 1997. At the time of her admission in the Respondent No. 2–school, her date of birth was reflected, in the enrolment form, as “30.03.1997”. Subsequently, in the parents-data form filled in, issued by the school in 2001-2002, as well as in the progress report of the petitioner in her nursery class, her date of birth was reflected as “30.03.1997”, and the same

date of birth was reflected in the term-1 Report Card of the petitioner in class X.

3. The petitioner's case is that, despite her date of birth having thus been reflected as "30.03.1997", in all her school records till then, the class X certificate, issued by the Central Board of Secondary Education (CBSE) reflected her date of birth, as "04.04.1997". This, it is alleged, prompted the petitioner's father to address an application to the school, seeking correction of the date of birth of the petitioner, as reflected in the class X certificate, issued by the CBSE, to "30.03.1997", instead of "04.04.1997".

4. The said application was forwarded by the school to the CBSE *vide* letter dated 3rd December, 2014. Enclosed, with the said letter, was, *inter alia*, a photo copy of the admission form of the petitioner, which reflected here date of birth as "30.03.1997", as already noted hereinabove. The letter exhorted the CBSE to correct the petitioner's date of birth in her class X certificate, pointing out that she would be appearing in her Class XII Board exams in March, 2015.

5. The CBSE responded, *vide* letter dated 1st April, 2015, requesting the school to submit a birth certificate of the petitioner – as, apparently, the birth certificate furnished with the letter of the school, had been issued by certain doctors at the time of birth of the petitioner.

6. This requirement was communicated, by the school, to the father of the petitioner, who applied, to the concerned authorities, on 23rd June, 2015, for issuance of a fresh birth certificate of the petitioner. A fresh birth certificate was, accordingly, issued by the Directorate of Economics and Statistics, Department of Planning and Development of the Government of Bihar, certifying that the petitioner had been born on 30th March, 1997.

7. Though Mr. Ashok Kumar, learned counsel appearing for the CBSE, has taken exemption to this certificate on the ground that the surnames of the petitioner's mother and father were misspelled therein, I am of the view that nothing substantial turns thereon, as the misspelling, if any, was only to the extent that, instead of "Choudhary", the surname of the petitioner's parents was reflected as "Chodhary". Besides, as has been pointed out by Mr. Sanjay Sharawat, learned counsel appearing for the petitioner, at the foot of the said certificate, the correct name of the petitioner's father is reflected, as "Anil Kumar Choudhary".

8. The petitioner submitted the above certificate to the school, for onward transmission to the CBSE, which was done, by the school, under cover of a letter dated 21st July, 2015, which read thus:

"Sector 'C' Pocket-5,
Vasant Kunj,
New Delhi-110 070
Tel.: 43261200, 43261215
43261236 Fax: 26132768

SCHOOL NO.-64644

NO.DPS/VK/CBSE/2015/ADM

dt. 21.07.2015

Regional Officer (Delhi)
Central Board Secondary Education
P.S. 1 & 2, Institutional area,
I.P. Extension, Patparganj,
New Delhi- 110092

**Subject : CORRECTION IN STUDENT'S DATE
OF BIRTH**

Respected sir,

Kindly refer to your letter No: F.12(II)M&M/AI-749/2013 dated 01.04.2015 received on 09.04.2015.

We received a fresh date of birth certificate from Mr. Anil Kumar Choudhary, father of Spriha Choudhary, student of this school regarding correction of his daughter's date of birth in class X board certificate (Board Roll No. 8195052).

You are requested to kindly do necessary correction in her date of birth in the class X board certificate and issue a fresh certificate with correct date of birth.

Thanking you,
Yours sincerely,
Principal"

(Emphasis supplied)

9. Since then, the writ petition asserts repeated steps were made, by the petitioner as well as her father, to contact the CBSE and have the date of birth of the petitioner, as reflected in her class X board certificate, issued by the CBSE, corrected, but to no avail.

10. It is in these circumstances, that the petitioner has approached this Court by means of the present writ petition, praying that directions be issued, to the CBSE, to correct the date of birth of the petitioner, in her secondary school examination certificate, from “04.04.1997” to “30.03.1997” and, accordingly, to issue a fresh secondary school examination certificate.

11. Besides the above, Mr. Sanjay Sharawat, learned counsel appearing for the petitioner, also draws my attention to the fact that the date of birth of the petitioner in her Passport as well as in her Aadhar Card (which are enclosed with the writ petition) is reflected as “30.03.1997”. In these circumstances, Mr. Sanjay Sharawat would contend that the attitude of the CBSE, stoically refusing to effect the requisite correction in the class X board certificate, issued by it, was, *ex facie*, completely arbitrary and irrational.

12. Opposing the prayer of the petitioner, Mr. Ashok Kumar, learned counsel appearing for the CBSE, first draws my attention to the list of candidates which was forwarded, as required by statute, by the school to the CBSE, prior to the class X board examinations, in which the date of birth of the petitioner was reflected as “04.04.1997”. He submits that the CBSE could not be held to be at fault, as it proceeded on the basis of the said date of birth as reflected in the documents submitted by the school. He submits that the said documents had considerable sanctity, and could not be lightly overlooked.

13. In this connection, it may be noted on 17th July, 2018, the school addressed the following communication to the CBSE, which read thus :

“DPS/VK/1989/7/Lgl/2018

17th Jul 2018

Assistant Secretary (Legal Unit)
CBSE, Regional Office
PS, 1-2, Institutional area, IP Extension
Patparganj, Delhi-110092.

Subject: **W.P. No. 9434/2017 Spriha Choudhary Vs. CBSE**

Dear Sir,

1. This is with reference to your letter F.No. CBSE/LEGAL/2018 dated 27th Jun 2018 received in our Office on 06.07.2018 regarding W.P. No. 9434/2017 Spriha Choudhary Vs. CBSE.

2. *The reporting wrong date of birth of the student, Spriha Choudhary, through list of candidates (LOC) was a typographic error.* Kindly note that before final submission of the LOC with the CBSE, the student was called to re-check the data for its correctness. However, the student also failed to notice the typographic error and signed the LOC as correct. This was considered as the final data verified by the student and it was only thereafter, that the same was submitted to the CBSE. A copy of LOC, verified and signed by the concerned student, is enclosed for your ready reference.

With regards

Yours sincerely

Principal

Encl: As stated”

(Emphasis supplied)

14. Mr. Ashok Kumar submits that this communication would actually support this case as the letter was not only silent as to the reason for the purported “typographical error” as contained in the list of names forwarded by the CBSE, but also acknowledged the fact that the data as so forwarded had been rechecked by the student before it was forwarded. He submits that, once the list of names had been forwarded by the CBSE, after having been seen by the petitioner, she could not maintain a writ petition, seeking correction of her date of birth. At the very least, he would submit, the case involves controversial issues of fact, which ought to be relegated to the realm of ordinary civil jurisdiction, and ought not to be adjudicated in a writ petition.

15. Mr. Ashok Kumar also draws my attention to the bye-laws of the CBSE, governing correction of the date of birth. The applicable bye-law is, admittedly, 69.2, which may be reproduced, *in extenso*, thus :

“(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 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 five years of the date of declaration of result. No correction whatsoever, shall be made on application submitted after the said period of five years.

16. Mr. Ashok Kumar emphasises the fact that it is clear, in the very opening sentence of Bye-law 69.2 that, once the date of birth is recorded in the records of the CBSE, no change therein would be made. The only relaxation, thereto, is with respect to correction of typographical and other errors. Mr. Ashok Kumar would submit that the said relaxation would not apply to the case of the petitioner, inasmuch as, in the list of names forwarded by the CBSE, the date of birth of the petitioner was reflected as “04.04.1997”.

17. Mr. Ashok Kumar also places reliance on a judgment of a co-ordinate bench of this Court in *Chirag Jain v. Central Board Secondary Education (2011) SCC Online Del, 2176*, to support this case.

18. I have heard both sides at length and have considered the material on record.

19. In my view, the CBSE is making a mountain of a molehill.

20. Unlike the case of *Chirag Jain (supra)* on which Mr. Ashok Kumar relies, the school record of the petitioner, from the date of her admission till the date her I-term class X examination, reflected her date of birth as “30.03.1997”. The only document, issued by the school, on which the petitioner’s date of birth was reflected as “04.04.1997” – which, it may be worthwhile to note, was only five days after 30th March, 1997, was the list of names forwarded by the school to the CBSE. The school had itself written, to the CBSE, pointing out that the reference in the said documents, to the date “04.04.1997” was a typographical error on its part. Even after receiving the said document, the CBSE had not rejected the petitioner’s case on that ground, and had written to the school requiring a fresh birth certificate of the petitioner to be provided. Responding thereto, a fresh birth certificate of the petitioner, issued by a governmental authority in Bihar – the sanctity of which has never been questioned and has, in any case, to be accorded due

respect, in view of Section 114 of the Indian Evidence Act, 1872 – was issued, reflecting the date of birth of the petitioner as “30.03.1997”. Other statutory records of the petitioners, such as her Aadhar Card and her Passport also reflected her date of birth as “30.03.1997”.

21. Proceeding to the applicable Bye-law, it would be seen that Bye-law 69.2 itself states that “corrections to correct typographical and other errors to make the certificate consistent with school records can be made provided that correction in the school records should not have been made after the submission of application form for submission to examination to the Board”.

22. The scope of this relaxation is not, therefore, limited to typographical errors, but covers typographical and *other errors*. Correction of all such errors, as are required to make the certificate of the CBSE consistent with the school records, are, therefore, permissible under Bye-law 69.2. In the present case, Mr. Ashok Kumar also does not dispute that the school records, at least from the time of admission till the I-term report card of the petitioner in class X, reflected her date of birth as “30.03.1997”. As such, the correction, sought by the petitioner was clearly within the ambit of the clause “correction to correct typographical and other errors to make the certificate consistent with the school records”. Bye-law 69.2 itself contemplates and permits such corrections being made.

23. Adverting, lastly, to the judgment of this Court in *Chirag*

Jain (supra), the said decision, if anything supports the case of the petitioner, as that was apparently a case in which the school records of the petitioner reflected the wrong date and, at the last minute, the petitioner wanted the date of the birth to be corrected. This Court, understandably, observed that it could not be believed that the parents of the child would be so forgetful as to repeatedly enter the wrong date of birth in the school records and realize the mistake only at the last stage. Applying the said principle to the present case, the date of birth of the petitioner in her school records, as entered by the parents from the beginning, was “30.03.1997”. The judgment *Chirag Jain (supra)* would, therefore, support the case of the petitioner and, make out a clear case for a mandamus to the CBSE to effect the requisite correction in the Class X board certificate, issued it.

24. Mr. Ashok Kumar also sought to submit that the claim of the petitioner is highly belated. In view of the fact that the petitioner ventilated her claim within the statutory period of five years prescribed in Bye-law 69.2 (iv), it is obvious that no allegation of any laches or delay, or that her application was time barred, could sustain, so as to defeat her case.

25. In view of the above, I am of the opinion that this writ petition deserves to succeed. A mandamus shall, therefore, issue to the CBSE to effect the requisite correction of the date of birth of the petitioner in her class X Board examination certificate from “04.04.1997” to “30.03.1997”. Corresponding correction in the date

of birth as written in words also, needless to say, would be effected in the said certificate.

26. I am informed that this would require the petitioner to return the original class X certificate, containing the wrong date of birth, before a corrected certificate could be issued by the CBSE. Needless to say, the petitioner is directed to do so.

27. The writ petition is, accordingly, allowed with no orders as to costs.

C. HARI SHANKAR, J

DECEMBER 20, 2018

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