

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

RSA No. 5919 of 2018 (O&M)

Date of decision : March 05, 2019

Central Board of Secondary EducationAppellant

Versus

Anjali JangraRespondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Nitin Kant Setia, Advocate
for the appellant.

LISA GILL, J.

Appellant – defendant/Central Board of Secondary Education (for short – 'CBSE') is aggrieved of judgment and decree dated 06.08.2018 passed by the learned District Judge, Panchkula whereby judgment and decree dated 06.12.2017 passed by the learned Civil Judge (Senior Division), Panchkula has been set aside, consequently allowing the suit filed by the respondent – plaintiff.

Brief facts necessary for adjudication of the case are that the plaintiff – respondent filed a suit seeking declaration to the effect that her actual date of birth is 28.09.1996 instead of 28.09.1998; with a further prayer for mandatory injunction directing the defendant – appellant to incorporate the necessary correction in her Secondary Examination certificate. It was pleaded that as per birth certificate issued by the Registrar, Birth and Death Registration Unit, Panchkula (Ex.PW1/1//Ex.PW3/6) date of birth of the plaintiff was 28.09.1996. The plaintiff stated that she had appeared for the Secondary Examination conducted by the CBSE through Satluj Public School, Sector 4, Panchkula in the session 2010-12. She passed her Secondary School Examination and was issued a Secondary

Examination Certificate bearing serial No. SSE/2012 197273 (Ex.PW1/2//Ex.PW3/3). The plaintiff applied for her passport and while filling the date of birth in the form, she discovered her date of birth has been wrongly mentioned as 28.09.1998 in her Secondary School Certificate instead of 28.09.1996. it was further pleaded that she approached the school authorities vide letter dated 20.11.2013 (Ex.PW3/1) who forwarded the request to the defendant – appellant for doing the needful at their end but to no avail. The plaintiff herself claimed to have visited the defendant's office with a request to correct her date of birth on the ground that it is due to an inadvertent or erroneous act on the part of the school authorities, which has led to the discrepancy causing great prejudice to the plaintiff. Legal notice dated 25.10.2016 under Section 80 CPC was also served upon the defendant. However, totally unjustified reply was sent. Hence, the suit was filed.

Defendant – appellant contested the suit. Written statement was filed raising various preliminary objections and averments on merits were controverted. It was stated that the plaintiff was trying to change her year of birth in order to gain benefit of the same over similarly situated students and she cannot get any benefit to the detriment of others in this manner. The desired correction, it was pleaded, could not be carried out as per the procedure laid down in the examination bye-laws of CBSE and the amended guidelines. As per bye-laws 69.2 (iii), an application for correction in the date of birth could be entertained by the Board only within one year of the date of declaration of the result and as per Rules 69.2 (iv) of the said bye-laws, no change in the date of birth once recorded in the Board's record shall be carried out though correction of typographical and other errors to make

the certificate consistent with the school records can be carried out provided corrections in the school records should not have been made after submission of application form for admission in the examination of the Board. Dismissal of the suit was prayed for.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled to the relief as claimed by him in the plaint, as prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the suit of the plaintiff is beyond the period of limitation? OPD.
4. Whether suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties?OPD
5. Whether the plaintiff is estopped to file the present suit by her own act and conduct? OPD
6. Whether the plaintiff has not affixed proper ad volerum court fees on the plaint?OPD
7. Relief.

Learned trial Court on considering the evidence, facts and circumstances of the case concluded that the plaintiff is estopped from seeking the correction in view of the document Ex.D1 i.e. final list of candidates forwarded by the school, where her date of birth is mentioned as 28.09.1998. Suit filed by the plaintiff was, accordingly, dismissed. Appeal filed by the plaintiff was, however, allowed by the learned District Judge, Panchkula vide judgment and decree dated 06.08.2018. Consequently suit filed by the plaintiff was allowed on the ground that the school records pertaining to the admission of the plaintiff besides the birth certificate prove her date of birth to be 28.09.1996. Aggrieved therefrom, present appeal has been filed by the appellant – CBSE.

Learned counsel for the appellants argues that the learned District Judge, Panchkula has grossly erred in allowing the appeal filed by the plaintiff and decreeing her suit while setting aside the well reasoned and logical judgment dated 06.12.2017 passed by the learned trial Court. It is submitted that as per Ex.D1 i.e. the list of candidates sent by the school, the particulars were got verified from the students. Date of birth of the plaintiff is mentioned as 28.09.1998 and this document is duly verified by the plaintiff herself, therefore, the factum of any other documents including that of the admission record of the school etc. would be irrelevant. It is, thus, prayed that this appeal be allowed and judgment and decree dated 06.08.2018 passed by the learned District Judge, Panchkula be set aside, consequently, suit filed by the plaintiff – respondent be dismissed.

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

Perusal of the file reveals that the plaintiff in order to prove her case testified as PW1. Plaintiff specifically stated that she initially got admission in Haryana Model School, Sector 10, Panchkula. From Class IX onwards, she studied at Satluj Public School, Sector 4, Panchkula. In the admission record at Haryana Model Senior Secondary School, her date of birth is mentioned as 28.09.1996 (Ex.PW4/2). Even as per the school leaving certificate (Ex.PW3/5), year of her birth is mentioned as '1996'. PW4 Balwinder, Physical Education Teacher, Haryana Model School Secondary Education, Sector 10, Panchkula has proved on record documents Ex. PW4/2 i.e. the admission form as well as Ex.PW4/3 i.e. School Leaving Certificate wherein the year of the plaintiff's birth is recorded as '1996'. PW2 Krishan Chand, Clerk Municipal Corporation,

Panchkula has proved the birth certificate (Ex.PW1/1) issued by the Department on 05.03.1997 which records the date of birth of the plaintiff to be 28.09.1996. It is a matter of record that the plaintiff approached the school for necessary correction vide letter dated 20.11.2013 (Ex.PW3/1) and her request was forwarded to the Board by the school for doing the needful. The school in question conveyed to the CBSE vide Ex.PW3/2, that the correct date of birth of the plaintiff is 28.09.1996. Various documents on the record of the school i.e. admission form, birth certificate, previous school transfer certificate, copy of the Class IX Registration number, copy of the class X marks sheet besides copy of the admission and withdrawal register were sent along by the school with this communication to the defendant – Board. Learned District Judge, Panchkula has rightly observed that there is indeed no evidence on record to show that the documents referred to above were incorrect, false or manipulated. The official witnesses as well as witnesses from both the schools where the plaintiff received education have duly proved the relevant documents to indicate that the correct date of birth of the plaintiff was 28.09.1996 and was so recorded in the said documents. The plaintiff immediately moved an application for correction of her date of birth on coming to know of the discrepancy as reflected in Ex.PW3/1 dated 20.11.2013. It is not a case where the plaintiff is guilty of any kind of delay in asking for necessary correction. Learned District Judge, Panchkula in this regard has observed as under:-

“ The perusal of school leaving certificate Ex.PW3/5 records date of birth as 28.09.1996. It is of class 8th and dated 03.05.2010 Ex.PW3/8 Registration and Admission Form again contains date of birth of plaintiff as 28.09.1996 for admission in 9th class. Ex.PW4/2 Admission Form, again contains date of birth as 28.09.1996. Ex.PW4/3 Admission and withdrawal Form

contains date of birth as 28.09.1996. All this shows that from the very beginning, the plaintiff is claiming and accepting her date of birth as 28.09.1996. Her request letter Ex.PW3/1 dated 20th November, 2013, reflect her claim that when she came to know the wrong recording of her date of birth in Ex. PW1/1 dated 24.05.2012, she immediately asked for the rectification and even school authority accepted as such vide Ex.PW3/2 dated 03 July, 2014 and sent to the Board. So, it is not a case of estoppel to hold that plaintiff accepted her wrong date of birth recorded in Matric certificate. Further, if in Ex.D1 which is a typed proforma, her signatures are shown to be appended against her particulars, does not suggest that she admitted her date of birth as 28.09.1998. Firstly, she was minor at that time and no estoppel can prevail against minor. It is not proved by defendant that the particulars of date of birth mentioned in it, were got typed at the instance of plaintiff. Perusal of Ex. D1 shows that this pertains to other students also. The defendant has pleaded that the school sent the list Ex.D1 of Ex.D1 shows that the school authorities prepared/typed it and students signed it, in routine manner. PW1 though stated that she read her date of birth in Ex.D1 but stated that she did not prepare. The reading on behalf of the minor again does not bind her. PW3 stated that Ex.D1 is prepared by school on the basis of Ex.D2, which is signed by the parents. Ex.D2 is the Scholar's Personal Data Form, signed by child/plaintiff and her mother, containing date of birth, as 28.09.1998. It is also shown to be checked and signed by class Teachers. It shows that no proper care was even taken by the school authorities, when date of birth was entered in it, because the other entire record available with school is having the date of birth of plaintiff as 28.09.1996, not 28.09.1998. It is no case and evidence led by the defendant that the mother of plaintiff asked to write date of birth as 28.09.1998 in place of 28.09.1996. No evidence is led to support such entry. It shows that it is a case of total carelessness or mistake on the part of the school authorities.

Form Ex.PW2/B shows that the mother of 8th class passed. She is not that literate to understand the impact of such inadvertent wrong noting of the the date of birth. So, in these circumstances, the principle of estoppel is not applicable.”

In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated judgment and decree dated 06.08.2018 passed by the learned District Judge, Panchkula which calls for any interference by this Court in second appeal.

No other argument was addressed.

Accordingly, this appeal is dismissed with no order as to costs.

March 05, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No