

\$~4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

RSA 89/2019

TABASSUM

..... Appellant

Through : Mr.Ashok Kumar, Ms.Beena Verma,
Advocates.

versus

CENTRAL BOARD OF SECONDARY EDUCATION & ORS

..... Respondents

Through : Mr.Ashok Kumar, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

%

08.08.2019

This appeal is against the impugned order judgment 05.03.2019 passed in RCA No.17/2019 by the learned ADJ vide which the judgment dated 30.07.2015 of the learned Senior Civil Judge in CS No.263/2014 was upheld.

The appellant had filed a suit for declaration and mandatory injunction for correction of her date of birth in records of CBSE as also her school records. The said suit was dismissed on 30.07.2015 by the Learned Civil Court observing interalia:

“14. In the instant case, the date of birth recorded by CBSE was 15.05.87 and the plaintiff sought it to be corrected as 15.05.89. Although the plaintiff is holding a certificate issued by a Municipal Corporation showing his date of birth as 15.05.89 but if the same was correct date of birth of the plaintiff, she could not have taken admission in the Senior Secondary School Examination in the year 2005 which was the age below the prescribed age criteria. The same factum has been noticed/observed in the above cited cases, namely, Paramjeet kaur vs. CBSE

(supra).

15. Accordingly, I am of the opinion that the plaintiff cannot be allowed to take benefit of her own wrong by shown higher age of two years as 15.05.89 at the time of giving examination and after passing of said examination by claiming the said date of birth as 15.05.87 i.e. lower than two years from the initial claimed age otherwise everyone will take benefit from different authorities by showing different dates of birth at different stages.

16. If the plaintiff seeks any relief from this court in the form of mandatory injunction directing a public authority to do certain act it is incumbent upon him to show that the said authority has not followed any existing law bye-laws or regulation which it is bound to follow. But the plaintiff has failed to do so on two counts first on the point of limitation and secondly no violation of law has been establish. In the light of above said discussion, i hold that the defendant no.1 was within its rights to reject the application seeking correction of date of birth in the certificate issued to the plaintiff. Accordingly I hold that the suit of the plaintiff is not maintainable being devoid of merits. Resultantly the same is dismissed. There is no order as to cost. Decree sheet be prepared accordingly. File be consigned to record room.”

The appellant filed an appeal viz. RCA 17/2019 but it was also dismissed on 05.03.2019. The Court observed as follows:

“The present appeal- has been filed for declaration . and mandatory injunction on 29.01.2019 against the impugned order dated 30.07.2015 passed by Sh. Naresh Kumar Laka, Ld. SCJ-cum-RC, Shahdara. The appellant has taken the plea that she has filed the appeal so late due to non-availability of the documents as the same were deposited with All India Institute of Medial Science (AIIMS) because the appellant got admission in PG course Dentistry and further submitted that appellant received all her documents back In August, 2018. However, perusal of the judicial file reveals that the appellant had appeared in Senior Secondary Examination in 2005

conducted by Central Board of Secondary Education (CBSE) vide roll number 6110792/05 and accordingly, she was issued a result card known as certificate in which her date of birth is written as 15.05.1987. Perusal of the judicial file also reveals that she had filed the suit for declaration and mandatory injunction on 15.07.2014. In these circumstance, it can be clearly observed that the appellant was not vigilant in filing her suit for declaration and mandatory injunction as she has filed the same suit in 2014 i.e. around 9 years after she had obtained the result card known as certificate.”

Admittedly the Board record of 2005, when the appellant appeared for 10th class examination, the date of birth noted therein is 05.05.1987, based on school records.

The learned counsel for the respondent refers to clause 69.2 of the CBSE Examination Bye-laws and it says *there would be no change in the date of birth once recorded in the Board record.* However the learned counsel for the appellant has taken me to clause 69.3 and says the typographical errors can be changed within five years thereof. Admittedly no such change was applied within five years.

It is also pertinent to mention, RCA No.17/2019 was also filed beyond the period of limitation. The reason given by the appellant was she could not lay her hands on the documents, since were submitted in AIIMS where the appellant is doing PG in dentistry. The learned Appellate Court thus rightly held such an answer is most unsatisfactory, as she could have easily obtain its certified copy by moving a request to the authorities. I agree to the concurrent reasoning given by Courts below and find no illegality in the orders of the learned Senior Civil Judge as also of learned ADJ. The facts of

the case does not give rise to any substantial question of law, the appeal is, therefore, dismissed. No order as to costs.

YOGESH KHANNA, J.

AUGUST 08, 2019

DV