

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

**CWP No.37640 of 2019 (O&M)
Decided on: 09.09.2020**

Arfan Mohammad

....Petitioner

Versus

Regional Secretary, C.B.S.E. and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Rubal Singla, Advocate
for the petitioner.

Mr. Kannan Malik, Advocate
for the respondent – CBSE.

Mr. Sachin Gupta, Advocate
for respondent No.3 – School.

ARVIND SINGH SANGWAN, J. (Oral)

The petitioner – Arfan Mohammad aged about 18 years has filed this writ petition praying for issuance of a writ in the nature of mandamus directing the respondents No.1 and 2 i.e. Central Board of Secondary Examination (CBSE) to correct the father's name of the petitioner in the 10th Standard (Secondary School Examination) held in March, 2018. It is stated in the petition that the father's name of the petitioner is 'Fak Din' and mother's name is Smt. Anju. The petitioner appeared in Senior School Certificate Examination in 2018 through respondent No.3 – School and successfully passed the same. In the Certificate of Class 10th, the petitioner's father's name is written as

'Fakdeen' whereas the correct name is 'Fak Din'. The spelling mistake occurred while filling the form, which was not attributable to the petitioner as in the official documents like Aadhar Card, Voter Card, Driving Licence, R.C. of motorcycle of petitioner's father, which are annexed with the petition as Annexure P-3, his name is mentioned as 'Fak Din'. Despite serving a legal notice dated 28.08.2019, the petitioner who had submitted all the supporting documents to the school as well as to the CBSE, the name of his father is not corrected. It is further stated in the petition that in the result of Class 8th prepared by respondent No.3 – School, the father's name of the petitioner is correctly mentioned as Fak Din and similarly, in Class 9th result prepared by respondent No.3 – School, the name is correctly mentioned, however, this mistake occurred in Class 10th result.

It is further stated that in response to the legal notice, the respondent No.3 – School has informed the petitioner that in the school record including the admission and withdrawal register, the father's name of the petitioner is correctly mentioned as 'Fak Din' in place of 'Fak Deen' and necessary information has also been sent to the CBSE with a request to correct the father's name of the petitioner in the Matriculation Certificate. The respondent No.3 – School has also sent a communication on 27.09.2019 to CBSE, Panchkula for correcting the name along with the supporting documents.

In this writ petition, reply has not been filed by counsel appearing for CBSE, however, certain documents are placed on record by CBSE, which are taken on record as 'Mark A'.

It is submitted that in the registration form of the

petitioner, his father's name is mentioned as 'Fakdeen' and therefore, the same was reflected in the Class 10th result.

I have heard counsel for the petitioner and learned counsel appearing for the CBSE.

The arguments raised by counsel for the petitioner is that under Rule 69.1 (ii), the change in the name of father, mother and guardian of the student, no limitation is provided, however, in case of change of name of the student, as per the amended Rule 69.1 (ii), one year period is prescribed, which was not there in the unamended. Clause 69.1(ii) of the Bye-laws of both amended and unamended, reads as follows:-

69.1(ii)	Correction in name to the extent of correction in spelling errors, factual typographical errors in the candidate's name / surname. Father's name to make it consistent with what is given in the school record or list of candidates (LOC) submitted by the school may be made.	Correction in name to the extent of correction in spelling errors, factual typographical errors in the candidate's name / surname. Father's name to make it consistent with what is given in the school record or list of candidates (LOC) submitted by the school may be made.
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	Application for correction in name of Candidate/Father's/Mother's/Guardian's name will be considered only within ten years of the date of declaration of result provided the application of the candidate is forwarded by the Head of institution with the following attested documents" a) True copy of admission form(s) filled in by the parents at the time of admission duly attested by the Head of the considered institution. b) True copy of the School Leaving Certificate of the previous school submitted by the parents of the candidate at the time of admission duly attested by the Head of concerned institution.	Application for correction in name of Candidate/Father's/Mother's/Guardian's name will be considered only within one year of the date of declaration of result provided the application of the candidate is forwarded by the Head of institution with the following attested documents" a) True copy of admission form(s) filled in by the parents at the time of admission duly attested by the Head of the considered institution. b) True copy of the School Leaving Certificate of the previous school submitted by the parents of the candidate at the time of admission duly attested by the Head of concerned institution.
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	c) True copy of the portion of the page of admission and withdrawal register of the school where the entry has been made in respect of the candidate, duly attested by the Head of the concerned institution.	c) True copy of the portion of the page of admission and withdrawal register of the school where the entry has been made in respect of the candidate, duly attested by the Head of the concerned institution.
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Thus, counsel for the petitioner has relied upon a Division Bench judgment, **“Manali d/o Chandrashekhar Barde vs CBSE, Chennai and another”**, 2018(6) MHLJ 100, wherein the Division Bench of Mumbai High Court at Nagpur Bench, has held as under:-

“13. Rule 69[1][ii] before amendment dealt with correction of spelling errors, factual typographical errors in the candidates' name, surname, fathers' name, mothers' name or guardians' name. After amendment, the categories of relatives mentioned earlier remain same. Later part of the amendment requires an application to be made within a period of one year of the date of declaration of result. It is not in dispute that Manali has applied within the said period.

14. Effort made by respondent no.1 before this Court to urge/contend that this is not a case of correction of spelling error or Judgment wp1400.18 factual typographical error, now needs consideration.

15. "Spelling errors" find mention separately and "factual typographical error" is by itself an independent head under which a mistake may fall. Thus, Rule 69.1[ii] recognizes two types of errors or mistakes. Those errors or mistakes are 'spelling errors' and 'factual typographical errors'.

16. Rule 69[1][i] does not speak of a nature or type of errors. It permits change in name or surname of the candidate. It therefore, is aimed at correcting the mistake which has occurred so as to bring the records of CBSC in consonance with the Rule. Rule 69[1][ii] speaks of changes in the name of father, mother, guardian of such students. Words 'factual typographical' therefore, covers even the case in which factually there are some errors. Spelling errors may be an inadvertent or technical mistake, which may take place due to pronunciation of a particular name or surname. (proper noun)

17. Proper noun may carry different spelling and therefore, error or committing mistakes while spelling such proper nouns are more. We Judgment wp1400.18 therefore, find that the type of errors provided for in Rule 69[1][ii], are of different and distinct nature. There is no overlapping and words used while describing the same are not synonyms.

18. When intention behind making such a provision is kept in mind, it is clear that necessary correction to bring the truth on record are permitted by these bye-laws. If contention of Shri P.Chawan, learned counsel for respondent no.1 is accepted, then the bye-laws do not deal with the case in which an adult father or mother of a child changes his/her name. There is no bar in changing the same, and respondent no.1 can not prohibit it. Therefore, it also cannot regulate it. There is no question of any time limit or limitation period, at least when a minor student also has no role in such change of name.

19. Here, we find that the effort of petitioner is to substitute correct name of her father, on record of respondent no.1. The request therefore, ought to have been dealt with under Rule 69[1][ii].

20. We therefore, find the impugned order dated 21.02.2017 unsustainable. It is accordingly quashed and set aside. We direct Judgment wp1400.18 respondent no.1 to take on record name as 'Chandrashekhar' and substitute it in place of 'Shekhar', as fathers' name of present petitioner. Necessary correction be carried out within a period of two weeks from today.

21. With these observations and orders, we partly allow the Writ Petition and dispose of the same. Needles to mention that after such correction, the documents like mark-sheet, migration, etc., required by the petitioner, shall be issued to her with necessary correction, within next two weeks and as per law. Rule is made absolute in aforesaid terms, with no order as to costs.”

Counsel for the petitioner has further relied upon a Full Bench judgment “**Satyasiva Sundar Nayak vs Secretary, Board of Secondary Education and others**”, 2019 SCC Online Ori 193, wherein the Division Bench of High Court of Orissa at Cuttack has referred the following question to the Full Bench:-

“The following question of law has been referred to the Full Bench:

Whether the change of the name or surname of father and mother of a candidate who had already appeared at the High School Certificate Examination and obtained the Board Certificate (H.S.C.) incorporating the names of the parents is permissible on the basis of a correction in the school record made subsequent to that date.”

The Full Bench, while interpreting the Orissa Senior Secondary Board Education Act, which is similar to regulation of CBSE, observed as under:-

“21. Ubi Jus Ibi Remedium – for every wrong, the law provides a remedy. The same is a fundamental principle of equity jurisprudence.

22. When the question of adoption arises, the Board in appropriate cases may reject the same. But when a father's/mother's name has been wrongly entered into the school admission register, the same cannot be allowed to continue.”

The Full Bench upheld the decision of one of the Division Bench which held that correction in name and surname is permissible.

Counsel for the petitioner has also referred to a Division Bench Judgment of Delhi High Court ***“Khushbu Kaushik (Minor) Thr. Her Father Lt. Col. Rajesh Chandra Kaushik vs CBSE through its Chairman and others”***, 2017(6) AD (Delhi) 78, wherein while interpreting Rule 69.1, the Division Bench has held as under:-

“19. So long as the identity of the Petitioner is clear and there is no doubt as to the name and identity of her parents, merely abbreviated recordal or mistake in recordal of the names, cannot be perpetuated, resulting in inconvenience and hardship to the Petitioner. The CBSE does not dispute the identity of the father or of the Petitioner. The CBSE merely submits that it did not commit any mistake and relied upon the LOC (list of candidates) and the form submitted by the school. The petitioner being a minor may not be always equipped with ready help and assistance from her father, who is an army officer of the rank of Lieutenant Colonel, in a transferable position. Owing to such circumstances an inadvertent & bonafide error may have occurred, justifying exercise of our

jurisdiction.

20. In the present case, the issue being extremely narrow and the documents on record clearly evidencing that the petitioner is the daughter Lt. Colonel Rajesh Chandra Kaushik, directing the petitioner to file a civil suit would led to injustice and unintended consequences including delay. Any delay would be detrimental to the Petitioner's further education.”

Similar view was taken by the Single Bench of Meghalya High Court in **“Andolan Chetri Patweth vs CBSE and other”, 2019 SCC Online Megh 161**. In this case, the Court observed that an analogy that can be drawn is that the requirement as prescribed in the Bye-laws 69.1 is too stringent and difficult to comply with by the student.

Counsel for the petitioner has further relied upon another judgment of Delhi High Court **“Arya Kariyatil Chendakera vs CBSE and another”, 2018 SCC Online Del 8402**, wherein the Division Bench while allowing the LPA, has observed as under:-

“5. Undisputedly, vide notification dated 25.06.2015, CBSE carried out additions/amendments in its Examination Bye-laws and thereunder, it, inter alia, carried out amendments to Bye-law nos. 69.1(i) and 69.1(ii) relating to change(s) and correction(s) in the names. Relevant extracts thereof, are as under :

Rule No.	Existing Rule	Amended Rule
69.1(i)	Change in name of candidate/Father/Mother/G uardian once entered in the Board's record at any stage while studying in Class IX, X, XI, XII or thereafter, within a period of ten years from the date of issue of first such document shall be considered on written request of the Candidate (not minor)/ father/mother/guardian duly forwarded by the Head of the Institution supported by the following documents :	Applications regarding changes in name or surname of candidates may be considered, provided the changes have been admitted by the Court of law and notified in the Government Gazette before the publication of the result of the candidate.
69.1 (ii)	Correction in name to the extent of correction in spelling errors, factual typographical errors in the Candidate's name/Surname, Father's name/Mother's name or Guardian's name to make it consistent with what is given in the school record or list of candidates (LOC) submitted by the school may be made.	Correction in name to the extent of correction in spelling errors, factual typographical errors in the Candidate's name/ Surname, Father's name/ Mother's name or Guardian's name to make it consistent with what is given in the school record or list of candidates (LOC) submitted by the school may be made.

	<i>Application for correction in name of Candidate/Father's/Mother's/Guardian's name will be considered only within ten years of the date of declaration of result provided the application of the candidate is forwarded by the Head of Institution with the following attested documents:</i>	<i>Application for correction in name of Candidate/Father's/Mother's/Guardian's name will be considered only within one year of the date of declaration of result provided the application of the candidate is forwarded by the Head of Institution with the following attested documents :</i>
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6. A bare perusal of the afore-said bye-laws shows that the change(s) and the correction(s) as provided for, are to be dealt with distinctly. It therefore necessarily follows that to deal with any such application, one has to first consider as to whether the application made is for a change or correction in the name(s). In this perspective, when one adverts to the case in hand, it is seen that the application made by the appellant was actually for corrections and not for any change in the name(s). What is sought, put in a simple manner, is as follows :

	<i>Recorded name</i>	<i>Proposed to be recorded</i>
<i>Appellant</i>	<i>Arya K C</i>	<i>Ms. Arya Kariyatil Chendakera</i>
<i>Father of appellant</i>	<i>K.C. Dilip</i>	<i>Sh. Kariyatil Chendakera Deleep Kumar</i>
<i>Mother of appellant</i>	<i>Kavitha Dilip</i>	<i>Smt. Kavitha Deleep</i>

7. A careful look into the names appearing in the subject document and the amendments proposed only leads to the

conclusion that appellant, in effect, seeks to furnish the full name, surname, and the middle name of the respective persons. In other words, the abbreviations used for the name, middle name or the surnames are only sought to be done away with. Such corrections in the school records and 'the subject document' in our considered view by no means can be construed to be a change of name. Though, the surname is sought to be corrected/amended as 'Deleep' instead of 'Dilip', it also has the effect of correction only rather than a change. It is thus seen that the application made by the appellant was actually for the correction in names rather than for any change. The reliance placed upon Aditya Srivastva's case (supra) by the ld. Single Judge, in our considered view, was misplaced inasmuch as, in that case, the appellant had sought change in name from 'Randhir Srivastava' to 'Aditya Srivastava' and for the purpose, reliance was placed upon un-amended Bye-law 69.1(i). That is not the position in the case in hand. The instant case, in our considered view, falls within the category of Bye-law 69.1(ii), which deals with the correction in the names. It is also not the case nor was it pointed out during the hearing that the identity of either the appellant or her parents or their relationship is in dispute. What is asserted to by the appellant, in fact, also finds support from the gazette notification for correction in names issued on 26.05.2017 as also the respective passports and the Aadhar Card, which are duly supported by an affidavit. It is thus

clear that the appellant's application was required to be considered for correction in name as provided for under Bye-law 69.1(ii). The plea urged to the contrary in the counter affidavit filed on behalf of CBSE is therefore, wholly misconceived and meritless.

8. Though, apparently, there is a delay of about four days in making of the application for the correction in the names inasmuch as, the date of publication of the subject document in the official gazette is 26.05.2017 and the application came to be made by the appellant to the school on 30.05.2017, at this stage, when we are of the opinion that the application if made within time, was required to be allowed and the stand taken by the CBSE regarding applicability of Bye-law 69.1(i) instead of Byelaw 69.1(ii) is wholly untenable, we do not consider it necessary to subject the appellant to the rigors of making a fresh application seeking correction in the name(s) in the records of the school or the CBSE while seeking condonation of delay of 4/5 days, as may be permissible. Moreso, for the reason that the appellant is yet to appear for another Board Examination to be held by CBSE for 10+2 and that shall call for issuance of another Grade Sheet/Certificate.

9. In view of the foregoing, it is directed that the respondent CBSE shall carry out the necessary corrections in the name(s) of the appellant as also her parents in their respective records and shall consequentially also issue a

modified/corrected Grade Sheet cum Certificate of Performance to the appellant within four weeks.”

Counsel for the petitioner has also relied upon the judgments of this Court in **“Anchal Balu vs CBSE and others”**, 2017(2) PLR 549, wherein again a similar view was taken by this Court.

Counsel for the petitioner has, thus, argued that once the school has corrected the record and has recommended it to the Board within the period prescribed, it should make the necessary correction.

In reply, counsel for CBSE has raised an objection that on the basis of the declaration made by the student in his examination form, the entries are made and therefore, no correction is permissible. Counsel for the respondent – CBSE has relied upon the Division Bench judgment of Delhi High Court passed in **W.P. (C) No.3266 of 2014**, **“Abhishek Kumar vs Union of India”**, wherein the petition was dismissed primarily on the ground of delay.

In reply, counsel for the petitioner has referred to the Division Bench judgment of this Court **“Ambika Kaul vs CBSE and others”**, 2015 SCC OnLine P&H 1669, wherein while allowing the LPA against a judgment of dismissal on the ground of delay, this Court by relying upon the judgment of Hon'ble Supreme Court **“Darshan Singh vs Gurdev Singh”**, 1994(6) SCC 585, has held that Section 6 of the Limitation Act alone gives rights and enlarges the limitation and entitles the minor or insane, or an idiot, to institute a suit or make an application within the same period after the disability has ceased. The

Court further held that the appellant can apply for correction of name within 03 years of attaining majority.

After hearing the counsel for the parties, I find merit in this petition.

The petitioner – Arfan Mohammad, has filed the application within a period of 03 years on attaining the age of majority and also within permissible limit under Rule 69.1 and therefore, his father's name need to be corrected from 'Fakdeen' to 'Fak Din' as the same find support from Class 8th and 9th result card wherein the correct name of his father, has been mentioned. The case of the petitioner is covered under the Rules of respondent – CBSE.

Accordingly, the present writ petition is allowed and the respondent – CBSE is directed to make necessary correction in the father's name of the petitioner – Arfan Mohammad as 'Fak Din' in place of 'Fakdeen', within a period of 01 month from the date of passing of this order.

Disposed of accordingly.

09.09.2020
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No