

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19468 of 2021

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Samar Pratap Sharma aged about 19 years, Sex Male, Son of Sunil Kumar Sharma, Resident of Village-Deotha, Post-Deotha P.S.- Pasraha, District-Khagaria.

... .. Petitioner/s

Versus

1. The Central Board of Secondary Education (CBSE), regional Offices at Ambika Complex, Behind State Bank Colony, Brahmsthan Gali, Sheikhpura, Raza Bazar, Bailey Road Patna-800014
2. Regional Officer, (CBSE), regional Offices at Ambika Complex, Behind State Bank Colony, Brahmsthan Gali, Sheikhpura, Raza Bazar, Bailey Road Patna-800014.
3. Assistant Secretary, (CBSE), regional Offices at Ambika Complex, Behind State Bank Colony, Brahmsthan Gali, Sheikhpura, Raza Bazar, Bailey Road Patna-800014.
4. The Controller of Examination, Central Board of Secondary Education (CBSE), regional Offices at Ambika Complex, Behind State Bank Colony, Brahmsthan Gali, Sheikhpura, Raza Bazar, Bailey Road Patna-800014.
5. The Principal, Patliputra Central School, (Affiliated to CBSE), Parbatta, Khagaria, Bihar, Pin 851216.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Avanindra Kumar Jha, Adv.
For the Respondent/s	:	Mr.Vinay Krishna Tripathy, Adv.
For the C.B.S.E.	:	Ms. Shobha Choubey, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 13-10-2022

1. The petitioner has prayed as under :-

(1) To hold and declare that the Respondent No.1 is obliged to make necessary corrections in the name of petitioner, and his parents, in the Petitioner's Grade Sheet-cum-Certificate of Performance (for AISSE 2017) and Migration Certificate, bearing serial number Mig/2017/0405670 (Annex-1 & 2) as per the school records of the petitioner as contained in Annex-6

series, and the respondent no.1 is further obliged to issue corrected certificates with in a fixed time frame.

(ii) To hold and declare that the action of the authorities concerned move before this Hon'ble Court and generating an uncalled for litigation, is arbitrary, discriminatory, malafide, hit by the Article 14 and 21 of the Constitution of India, hence fit to be deprecated by this Hon'ble Court.

(iii) For issuance of an order, direction or a writ in the nature of Mandamus directing the authorities concerned of the Respondent no.1 to make necessary corrections in the name of the petitioner, and his parents, in the petitioner's Grade Sheet-cum-Certificate of Performance (for AISSE 2017) and Migration Certificate, bearing serial number Mig/2017/0405670 (Annex-1 & 2) as per the school records of the petitioner as contained in Annex-6 series, and the respondent no.1 is further obliged to issue corrected certificates with in a fixed time frame

2. The issues involved in the present writ petition stands concluded by the judgment passed by the Hon'ble Supreme Court in Jigya Yadav Vs. Central Board of Secondary Education and Ors. (2021) 7 SCC 535, wherein the Hon'ble Supreme Court has issued concluded as under:-

“192. Although we have discussed the broad issues canvassed before us, in the

ultimate analysis the real dispute requiring resolution is about the nature of correction or change, as the case may be, permissible to be carried by the CBSE at the instance of the student including past student. As noted earlier, broadly, two situations would arise.

193. The first is where the incumbent wants “correction” in the certificate issued by the CBSE to be made consistent with the particulars mentioned in the school records. 193.1. As we have held, there is no reason for the CBSE to turn down such request or attach any precondition except reasonable period of limitation and keeping in mind the period for which the CBSE has to maintain its record under the extant regulations. While doing so, it can certainly insist for compliance of other conditions by the incumbent, such as, to file sworn affidavit making necessary declaration and to indemnify the CBSE from any claim against it by third party because of such correction. The CBSE would be justified in insisting for surrender/return of the original certificate (or duplicate original certificate, as the case may be) issued by it for replacing it with the fresh certificate to be issued after carrying out necessary corrections with caption/annotation against the changes carried out and the date of such correction. It may retain the original entries as it is except in respect of correction of name effected in exercise of right to be forgotten. The fresh certificate may also contain disclaimer that the CBSE cannot be held responsible for the genuineness of the school records produced by

the incumbent in support of the request to record correction in the original CBSE certificate. The CBSE can also insist for reasonable prescribed fees to be paid by the incumbent in lieu of administrative expenses for issuing fresh certificate.

193.2. At the same time the CBSE cannot impose precondition of applying for correction consistent with the school records only before publication of results. Such a condition, as we have held, would be unreasonable and excessive. We repeat that if the application for recording correction is based on the school records as it obtained at the time of publication of results and issue of certificate by the CBSE, it will be open to CBSE to provide for reasonable limitation period within which the application for recording correction in certificate issued by it may be entertained by it. However, if the request for recording change is based on changed school records post the publication of results and issue of certificate by the CBSE, the candidate would be entitled to apply for recording such a change within the reasonable limitation period prescribed by the CBSE. In this situation, the candidate cannot claim that she had no knowledge about the change recorded in the school records because such a change would occur obviously at her instance. If she makes such application for correction of the school records, she is expected to apply to the CBSE immediately after the school records are modified and which ought to be done within a reasonable time.

193.3. Indeed, it would be open to

the CBSE to reject the application in the event the period of preservation of official records under the extent regulation had expired and no record of the candidates concerned is traceable or can be reconstructed. In the case of subsequent amendment of school records, that may occur due to different reasons due to including because of choice exercised by the candidate regarding change of name. To put it differently, request for recording of correction in the certificate issued by the CBSE to bring it in line with the school records of the incumbent need not be limited to application made prior to publication of examination results of the CBSE.

194. As regards request for “change” of particulars in the certificate issued by the CBSE, it presupposes that the particulars intended to be recorded in the CBSE certificate are not consistent with the school records. Such a request could be made in two different situations. The first is on the basis of public documents like birth certificate, Aadhaar card, election card, etc. and to incorporate change in the CBSE certificate consistent therewith. The second possibility is when the request for change is due to the acquired name by choice at a later point of time. That change need not be backed by public documents pertaining to the candidate.

194.1. Reverting to the first category, as noted earlier, there is a legal presumption in relation to the public documents as envisaged in the 1872 Act. Such public documents, therefore, cannot be ignored by the CBSE. Taking note of those documents, the

CBSE may entertain the request for recording change in the certificate issued by it. This, however, need not be unconditional, but subject to certain reasonable conditions to be fulfilled by the applicant as may be prescribed by the CBSE, such as, of furnishing sworn affidavit containing declaration and to indemnify the CBSE and upon payment of prescribed fees in lieu of administration expenses. The CBSE may also insist for issuing public notice and publication in the Official Gazette before recording the change in the fresh certificate to be issued by it upon surrender/return of the original certificate (or duplicate original certificate, as the case may be) by the applicant. The fresh certificate may contain disclaimer and caption/annotation against the original entry (except in respect of change of name effected in exercise of right to be forgotten) indicating the date on which change has been recorded and the basis thereof. In other words, the fresh certificate may retain original particulars while recording the change along with caption/annotation referred to above (except in respect of change of name effected in exercise of right to be forgotten).

194.2. However, in the latter situation where the change is to be effected on the basis of new acquired name without any supporting school record or public document, that request may be entertained upon insisting for prior permission/ declaration by a court of law in that regard and publication in the Official Gazette including surrender/return of original certificate (or duplicate original certificate, as

the case may be) issued by CBSE and upon payment of prescribed fees. The fresh certificate as in other situations referred to above, retain the original entry (except in respect of change of name effected in exercise of right to be forgotten) and to insert caption/annotation indicating the date on which it has been recorded and other details including disclaimer of CBSE. This is so because the CBSE is not required to adjudicate nor has the mechanism to verify the correctness of the claim of the applicant. 195. In the light of the above, in exercise of our plenary jurisdiction, we direct the CBSE to process the applications for correction or change, as the case may be, in the certificate issued by it in the respective cases under consideration. Even other pending applications and future applications for such request be processed on the same lines and in particular the conclusion and directions recorded hitherto in paras 193 and 194, as may be applicable, until amendment of relevant bye-laws. Additionally, the CBSE shall take immediate steps to amend its relevant bye-laws so as to incorporate the stated mechanism for recording correction or change, as the case may be, in the certificates already issued or to be issued by it.”

3. Keeping in view, the aforesaid directions which stands squarely applicable to the present case, this writ petition is disposed of in the aforesaid terms.

4. It is expected from the Board now to do the needful

expeditiously within a period of two months.

(Sanjeev Prakash Sharma, J)

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