

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

RSA-131-2023 (O&M)
Date of Decision :19.01.2023

Central Board of Secondary Education

...Appellant

Versus

Nitesh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

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Harsimran Singh Sethi, J. (Oral)

CM-431-C-2023

The present application has been filed for condonation of delay of 224 days in refiling the present appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Delay of 224 days in refiling the present appeal is condoned.

CM-432-C-2023

As prayed for, application is allowed.

RSA-131-2023

The present regular second appeal has been filed by the appellant-Board challenging the judgment and decree dated 07.11.2019 passed by the trial Court by which, the suit filed by the respondent-plaintiff for the correction of his date of birth has been allowed and the appeal filed by the appellant-Board before the Lower Appellate Court has been

dismissed vide order dated 08.02.2021.

The facts which have come on record are that respondent-plaintiff was admitted in a particular school in district Rohtak, which was affiliated with the Central Board of Secondary Education i.e. appellant herein. Respondent-plaintiff passed his 10th class examination in the year 2016 under the Roll No.2188970. After passing of the said examination, a certificate was issued to him describing his date of birth as 13.10.1999 instead of 20.02.2000. The respondent-plaintiff approached the appellant-Board to correct his date of birth but the said request was not accepted which led to the filing of the civil suit by the respondent-plaintiff.

On the basis of the evidence which had come on record, respondent-plaintiff was able to prove his date of birth as 20.02.2000 before the trial Court and his suit was decreed vide order dated 07.11.2019 with the direction to the appellant-Board to correct his date of birth in their record as well as to give him a correct matriculation certificate mentioning his correct date of birth as 20.02.2000.

Feeling aggrieved against the said order dated 07.11.2019 of the trial Court, appellant-Board had preferred an appeal which came to be decided on 08.02.2021 and finding no discrepancy in the order passed by the trial Court, the appeal was dismissed. In the present regular second appeal, the said orders dated 07.11.2019 passed by trial Court and order dated 08.02.2021 passed by the Lower Appellate Court are under challenge.

Learned counsel for the appellant-Board argues that once a particular date of birth was mentioned in the examination form while appearing in 10th class examination, which has been taken into account while recording the date of birth of the respondent-plaintiff, it cannot be

said that the recording of the date of birth in the certificate given to the respondent-plaintiff as 13.10.1999 is incorrect in any respect. Learned counsel for the appellant-Board submits that there is no provision for the change of date of birth, keeping in view the information which a candidate supplies in the examination form. Hence, the orders directing the appellant-Board to correct the date of birth of a candidate without there being any provisions to said effect, are liable to be set aside being contrary to the rules governing the said issue.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, it may be noticed herein that there is no plea by the appellant-Board that there is any misrepresentation on the part of the respondent-plaintiff or the date of birth is being changed with some ulterior motive. It is a conceded position that the respondent-plaintiff appeared in the 10th class examination for which, a certificate was issued to him by the appellant-Board wherein, his date of birth was recorded as 13.10.1999. The only prayer of the respondent-plaintiff was that the date of birth should be changed from 13.10.1999 to 20.02.2000, which is his actual date of birth.

Learned counsel for the appellant-Board has not been able to point out that the direction given by the Courts below to correct the date of birth of the respondent-plaintiff in their record as 20.02.2000 is without any valid evidence on record. Once, the respondent-plaintiff has been able to prove his correct date of birth as 20.02.2000, the orders passed by the Courts below need not to be interfered with by this Court.

The argument of the learned counsel for the appellant-Board

that there is no provision with the appellant-Board to correct the date of birth of the candidate, the said question is also no longer *res integra*, keeping in view the orders passed by this Court in various writ petitions involving the same aspect of change of name and date of birth.

A similar question relating to the change of name came up for consideration before this Court in **CWP-11005-2020** titled as **Nitin Kumar vs. Central Board of Secondary Education and others** decided on 24.09.2020 wherein, this Court has held that the change of name can be allowed even if, there is no bye-law directing the Board to change the name.

Relevant paragraphs of the judgment is as under:-

“This being the factual position, the rather pedantic approach of the CBSE in blindly insisting on strict implementation of its own Bye-law cannot be accepted. It is not the case of the CBSE that any incorrect particulars are sought to be projected by the petitioner or that any fraud is being perpetrated by seeking correction of his father's name. The CBSE does not dispute the validity of the petitioner's claim in this regard. It is only on the ground that the petitioner's parents made a mistake while getting him admitted in the third respondent school that the CBSE now asserts that the petitioner is estopped from seeking any correction contrary to the school record and its own inability to correct its records and issue proper certification in relation to the petitioner's 10th and 12th class examinations.

At this stage, it may be noted that this is not the first instance that the CBSE's refusal to effect corrections in such school certificates is falling for consideration before this Court. Perusal of the orders passed in CWP-23097-2017, CWP-27040-2017, CWP-26481-2017, CWP-1709-2017 and CWP-23270-2017 reflects that these were all cases where students had assailed such

refusal of correction in their certificates but the CBSE was gracious enough to concede before this Court the relief of correction of the name of the father or mother or the surname of the student.

Mr. Kannan Malik, learned counsel for the CBSE, would argue that those cases are distinguishable as the school record supported such corrections, unlike the case on hand. However, this Court does not find it to be so. For instance, in CWP-23270-2017, titled 'Shikha Khaneja vs. Central Board of Secondary Education and others', the petitioner therein had sought correction of her mother's name as Vipin Kumari Khaneja in the place of Sarita Khaneja. Admittedly, the mother had entered the wrong name in the school admission form at the time of her daughter's admission. Despite the same, the CBSE accepted the documentation produced in proof of the correct name and stated that it had no objection in carrying out the correction. Similar was the situation in CWP-26481-2017, titled 'Ekamvir Singh Chawla vs. Central Board of Secondary Education and others'.

It is therefore not open to the CBSE to adopt a different stand only in the present case, on the ground that the school record also reflects the wrong name. That apart, when the petitioner's request is genuine and bonafide in itself and the obdurate refusal thereof by the CBSE not only results in an adverse impact upon him but also penalizes him for no fault of his, this Court cannot remain silent. Certificates of school education offered by the CBSE provide students the launching pad for further studies and career-building. This being the basic purpose of such certification, the CBSE cannot refuse to correct simple mistakes in the student's name or the names of the student's parents in such certificates, losing sight of the larger picture.

Further, it would be an exercise in futility to drive such a student to the long-drawn and time consuming process of securing a decree from the competent civil

Court, accepting his/her claim for such correction.

On the above analysis, the hidebound attitude of the CBSE in refusing the request of the petitioner, though it does not deny the genuineness of his claim, cannot be countenanced.”

In the present case, there is no fraud being alleged or pleaded by the appellant and there is no assertion that in case the date of birth of the respondent-plaintiff is changed, he was not entitled for appearing in the examination concerned. In the absence of any such fact, date of birth can be corrected in the record so that the respondent-plaintiff does not suffer prejudice for the rest of his life wherein, he is not only to get admission in various other institutions but the same is to be used for the purpose of employment also.

Keeping in view the fact that learned counsel for the appellant-Board has not been able to point out any perversity in the findings so recorded by the Courts below as well as the settled principle of law noticed hereinbefore, no interference is called for by this Court and the present regular second appeal is accordingly dismissed.

CM-433-C-2023

Application is also dismissed.

January 19, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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