

RSA-4034-2019(O&M)

Date of Decision : 03.03.2023

Central Board of Secondary Education

...Appellant

versus

Manoj and another

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Kannan Malik, Advocate for the appellant.

Respondents ex parte vide order dated 28.02.2023.

B.S. Walia, J. (Oral)

CM-11055-C-2019

For the reasons as are mentioned in the application, the same is allowed. Delay of 46 days in refiling of the appeal is condoned, subject to all just exceptions.

RSA-4034-2019

1. Challenge in the instant regular second appeal is to the judgment and decree passed by the learned Addl. District Judge, Rohtak, dated 03.04.2019, dismissing Civil Appeal No.6 of 2019 while upholding the judgment and decree dated 30.10.2018, passed by the learned Civil Judge (Junior Division), Rohtak, decreeing the suit of respondent No.1/plaintiff to the effect that the actual date of birth of respondent No.1/plaintiff is 07.07.1999 and directing the appellant/defendant No.1 to correct the actual date of birth of the plaintiff in its record within two months from the date of judgment, on moving of application by respondent No.1/plaintiff.

following issues were framed:-

1. Whether the plaintiff is entitled to the relief of declaration and mandatory injunction as prayed for? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Whether the Civil Court has no jurisdiction to entertain and try the present suit? OPD
5. Whether the present suit is bad for non-joinder and misjoinder of necessary parties? OPD
6. Whether the present suit is time barred? OPD
7. Whether the plaintiff has not come to the Court with clean hands and has suppressed material facts? OPD
8. Relief.

3. Thereafter, on the basis of pleadings, evidence and submissions, learned trial Court decided issue No.1 in favour of respondent No.1/plaintiff and against the appellant/defendant No.1 while issue Nos.2 to 7 were also decided in favour of respondent No.1/plaintiff and against the appellant/respondent No.1, resultantly, the civil suit filed by respondent No. 1 / plaintiff was decreed.

4. Sole argument of learned counsel for the appellant is that as noticed in paragraph No.11 of the judgment and decree of the learned trial Court, entry of date of birth of respondent No.1/plaintiff was made on the basis of information furnished by the family members of respondent No.1/plaintiff while admitting him in the school and as per the forms filled up by respondent No.1/plaintiff at the time of examination the appellant was bound by the rules to record the date of birth of a candidate as recorded in the school record. Learned Counsel

contends that respondent No.1/plaintiff had relied upon the following

documentary evidence:-

Ex. PW1/B, Copy of Senior School Certificate Examination, 2017 of Manoj

Ex. PW1/C, Copy of Adhaar Card

Ex. PW1/D, Copy of Ration Card

Ex. PW1/E, Birth Certificate

Ex. PW2/A, Copy of pages of Date & Birth Register

while the appellant tendered Ex.D1 i.e. examination Bye-Laws and closed evidence.

5. Learned Counsel contends that despite it being the stand of the appellant as based on Bye-Laws 69.2 of the Examination Bye-Laws that entry of date of birth made in the Board's records was not open to change except to correct typographical and other errors to make the certificate consistent with the school records and the correction in the date of birth being permissible under orders of the Chairman on his being satisfied that wrong entry had erroneously been made in the list of candidates/application form, of the candidate for the examination and the same being borne out from the record i.e. copies of application for admission of the candidate to the School, portion of the page of admission and withdrawal register where entry in date of birth had been made, and the School Leaving Certificate of the previous school etc. Clause 69.2 of the Bye Laws is reproduced as under:-

69.2 Change/Correction in Date of Birth

(i) No change in the date of birth once recorded in the Board's records shall be made. However, corrections to correct typographical and other errors to make the certificate consistent with the school records can be made provided that corrections in the school records should not

have been made after the submission of application form for admission to Examination to the Board.

(ii) Such correction in Date of Birth of a candidate in case of genuine clerical errors will be made under orders of the Chairman where it is established to the satisfaction of the Chairman that the wrong entry was made erroneously in the list of candidates/application form of the candidate for the examination.

(iii) Request for correction in Date of Birth shall be forwarded by the Head of the School alongwith attested Photostat copies of

(a) application for admission of the candidate to the School;

(b) portion of the page of admission and withdrawal register where entry in date of birth has been made; and

(c) the School Leaving Certificate of the previous school submitted at the time of admission.

(iv) The application for correction in date of birth duly forwarded by the Head of School alongwith documents mentioned in byelaws 69.2(iii) shall be entertained by the Board only within two years of the date of declaration of result of Class X examination. No correction whatsoever shall be made on application submitted after the said period of two years. This will be effective from the examination to be held in March, 1995

6. Learned Counsel contends that birth Certificate Ex.PW1/E issued by the Registrar (Births and Deaths) besides copy of pages of Date

and Birth Register Ex.PW2/A, as also Aadhaar Card and Ration Card Ex.PW1/C and PW1/D reflect the date of birth of the respondent / plaintiff as 07.07.1999 whereas copy of the senior school examination certificate-2017, reflects the date of birth of the respondent/plaintiff as 07.07.2000. Learned counsel by relying on the decision of Hon'ble the Division Bench of this Court in Ambika Kaul and others vs. Central Board of Secondary Education and others-LPA No.1613 of 2014 decided on 21.05.2015, contends that in view of said decision, as per the Central Board of Secondary Education Rules and Regulations, it was mandatory for a person to produce date of birth certificate issued by the Registrar (Births and Deaths) wherever existing as proof of date of birth and if a person did not give birth certificate issued by the Registrar at the time of admission in school, he did so at his own peril and once he had disclosed a particular date of birth and completed education, thereafter he is estopped from relying upon the birth certificate issued by the Registrar of Births and Deaths, at a later stage of life as no premium can be given in the circumstances to a candidate having qualified matriculation examination with a particular date of birth on the ground that he came to know about his correct date of birth later as the same would amount to giving premium to a candidate despite his conscious action. Learned Counsel further contends that the Central Board of Secondary Education permits correction in spellings, factual and typographical errors so as to enable the candidates particulars to be in tune with the date given in the admission form but the date of birth cannot be permitted to be corrected in terms of the regulation of the School Board merely because in a birth certificate issued by the Registrar, there is a different date than what was mentioned in the matriculation certificate. Relevant extract of the

decision in Ambika Kaul's case (supra) is reproduced as under:-

[22] But in respect of the persons born after the applicability of the Act, the matter requires to be examined from a different angle. The Act gives statutory recognition to the birth certificates. It is a mandatory requirement for all persons in all conceivable situations to report about the birth and death to the Registration Officers. The Central Board of Secondary Education makes it mandatory to produce date of birth certificate issued by the Registrar of Births and Deaths, wherever existed, as proof of date of birth. If a person does not give date of birth certificate issued by the Registrar at the time of admission to a school, he does it at his own peril. Once he has disclosed a particular date of birth, completed education; he is estopped to rely upon the birth certificate issued by the Registrar of Births and Deaths, at a later stage of life. The admission to a School is to be based upon a date given by the candidate, which date continues to be reflected in the matriculation certificate as well. Therefore, once a candidate has completed his education on the basis of an assumed date, in conflict with the birth certificate issued by the Registrar of Birth and Deaths, he is estopped to rely upon the birth certificate at the later stage of life.

[23] The Central Board of Secondary Education permits correction in spellings, factual and typographical errors so as to be in tune with the date given in the admission form. The date of birth cannot be permitted to be corrected in

terms of the regulation of the School Board merely because in a birth certificate issued by the Registrar, there is a different date than what is mentioned in the matriculation certificate. The correction permitted is of clerical mistakes from the details given in the admission form. It does not entitle a student to seek complete change of date of birth than given in the admission form from the Central Board of Secondary Education.

[24] The tendency of the people of this country to give older date of birth in the matriculation examination to qualify in the matriculation examination but then to rely upon the birth certificate that he is younger in age at the time of employment, cannot be countenanced. No premium can be given to a candidate having qualified matriculation examination with a particular date of birth on the ground that he came to know about his correct date of birth later. It is giving a premium to one for one's own conscious action

[26] The Rule of estoppel was also applied by the Supreme Court in a judgment reported as Lakshmibai National Institute of Physical Education and another v. Shant Kumar Agarwal, AIR 2013 SC 1544, when the Court found that since at the time of joining as Lower Division Clerk, the respondent therein did not produce any evidence showing his date of birth as 15.1.1948 as against 20.2.1942 as mentioned in the matriculation certificate. The Court held that if he had the certificate issued under the 1969 Act, there was no reason for not producing the same, but producing

other record as proof of his date of birth is not tenable.

Therefore, the candidate was not permitted to rely upon the birth certificate. The relevant findings are as under:-

“21. There is another reason for our inclination to set aside the impugned judgment. At the time of joining as Lower Division Clerk in the office of Commissioner, Settlement and Director of Land Records, Madhya Pradesh, the respondent did not produce any evidence showing his date of birth as 15.01.1948. At the time of his appointment in 1986 as Personal Assistant in the employment of appellant No.1, the respondent did not produce birth certificate dated 25.2.1970 issued by the Corporation. Rather, he got the date of birth entered in the service book by producing copy of the judgment of the trial Court, which had already been set aside by the lower appellate Court on 27.7.1977.

If the respondent was possessed with the certificate issued by the Corporation under the 1969 Act, then there was no earthly reason for not producing the same for the purpose of recording of date of birth in the service book. However, the fact of the matter is that instead of relying upon the birth certificate, the respondent produced copy of the judgment of the trial Court and got his date of birth recorded as 15.1.1948 by suppressing the fact that the lower appellate Court had reversed the judgment of the trial Court. Therefore, the Division Bench of the High Court committed serious error by setting aside the orders passed by learned Single Judge.”

[38] On the basis of the judgments referred to above, it can be safely concluded that entry from the office of the Registrar Births and Deaths carries a presumption of correctness being maintained by a public office in discharge of the official duties. But even though the date of birth is recorded differently in the certificate of birth than in the matriculation certificate, the rule of estoppel will apply. No person will be entitled to dispute the same under the guise to correct the mistake in the entry of date of birth in the matriculation certificate. He has taken admission in the school on the basis of a given date of birth and qualified the same. It will be unreasonable to infer that the candidate or his parents, who admitted the child to the school, were not aware of the correct date of birth. The rule of estoppel debars the candidate or a person to dispute the date of birth given in the matriculation certificate if it is not in sync with the certificate issued by the Registrar of Births & Deaths.

[39] The correction contemplated to be carried under By-law 69.2 is in respect of the clerical mistake. Clerical mistake is not an entry of actual date of birth. Clerical mistake is that while recording the date of birth, by mistake, some digit of date of birth was wrongly recorded by oversight or inadvertently. It is only the correction of clerical mistake not requiring any intrinsic evidence to support such mistake, which is permissible under the said by-laws. Therefore, by-law 69.2 does not authorize any person to seek correction of date of birth as mentioned in the

registers of births and deaths.”

7. Learned counsel contends that despite the aforementioned regulations having been brought on record by way of Ex.D/1, the learned Courts below did not consider the same, therefore, the judgment and decree passed by the learned trial Court as upheld by the learned lower Appellate Court is liable to be set aside and the suit dismissed.

8. Learned counsel contends that in the circumstances, the following substantial question of law arises for consideration in the instant appeal:-

Whether the plaintiff was estopped from filing the suit seeking declaration for correction of date of birth on the basis of birth certificate despite at the time of admission his parents having given the date of birth as was entered in the school record on the basis of which senior secondary examination certificate Ex.PW1/B was issued ?.

9. I have perused the record and considered the submissions of learned counsel.

10. Admittedly, the respondent/plaintiff studied in school and passed secondary school examination-2017 and was issued certificate Ex.PW1/B, on the basis of record submitted at the time of his admission in School wherein his date of birth was recorded as 07.07.2000 whereas birth certificate Ex.PW1/E, copy of pages of date and birth register Ex.PW2/A, Aadhaar Card and Ration Card Ex.PW1/C and Ex.PW1/D now relied upon reflect date of birth of the respondent/plaintiff as 07.07.1999 thereby making him elder than as per the date of birth as recorded in the Senior Secondary Examination-2017 Certificate. However, change in date of birth is permissible only in terms of the regulations applicable and the respondent plaintiff does not fulfill the

parameters as per the regulations applicable so as to enable him to seek change of date of birth on the basis of birth certificate. Moreover, it is not possible that the parents of the respondent/plaintiff were not aware of the correct date of birth at the time of admission of the respondent/plaintiff in school. The birth certificate issued by the Registrar (Births and Deaths), not having been submitted by the respondent / plaintiff to the school authorities, at the time of admission in School and his having completed education and got certificate Ex.PW1/B i.e. Senior School Examination certificate-2017, now allowing correction of date of birth would amount to give premium to the respondent/plaintiff for his own conscious action even though the respondent/plaintiff becomes elder in age on the basis of change sought. Having taken advantage of admission in school at the time of initial entry within a particular age group on the basis of date of birth i.e. 07.07.2000, and thereafter having completed education and been issued Senior School Examination Certificate-2017, the respondent plaintiff is estopped from relying on different record.

11. In the light of the position noted above as well as decision of Hon’ble the Division Bench in Ambika Kaul’s case (supra), the question of law framed above is answered in favour of the appellant and against respondent No.1/plaintiff. No other point has been argued.

12. Accordingly, the appeal is allowed. Impugned judgments and decrees passed by the learned Courts below dated 30.10.2018 and 03.04.2019 are set aside and the civil suit dismissed but with no order as to costs.

(B.S. Walia)
Judge

03.03.2023
rajesh