

104 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2247-2022 (O&M)
Date of Decision : 29.04.2023

PUNJAB SCHOOL EDUCATION BOARD ...Appellant

Versus

ASHWINDER KUMAR AND OTHERSRespondents

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

Present : Mr. Anupam Singla, Advocate for the appellant.

None for respondent Nos.1, 2 & 4.

Mr. APS Sehgal, Advocate for Mr. Birinder Pal, Advocate
for respondent No.3.

B.S. Walia, J. (Oral)

[1] None was present on behalf of the contesting respondents on 24.02.2023, whereupon, on request of learned counsel for respondent No.3 the case was adjourned to 25.04.2023. On 25.04.2023 none was present for the appellant, therefore, the case was adjourned to 27.04.2023. On 27.04.2023, on joint request of counsel for the parties, the case was adjourned for today. Today, none has put in appearance on behalf of respondent Nos.1, 2& 4. In the circumstances, I am of the considered view that no further adjournment is warranted, therefore, I have heard learned counsel for the appellant as well as counsel for respondent No.3 and perused record produced by them.

[2] Learned Counsel for the appellant contends that respondent No.1/plaintiff had filed Civil Suit No.CS-516-16 on 16.07.2016 for a

declaration that his name was Ashwinder Kumar and that the birth certificate issued by the Registrar, Births and Deaths, BassiPathana, Tehsil BassiPathana, District Fatehgarh Sahib and Registrar, Births and Deaths, Office of Civil Surgeon, Civil Hospital, Fatehgarh Sahib, Tehsil and District Fatehgarh Sahib (respondent Nos.3 and 4 herein) showing his name as Ashwani Kumar was wrong and the same was liable to be corrected by mentioning the name as Ashwinder Kumar and further for the issuance of a Mandatory Injunction directing the Punjab School Education Board, Mohali through its Chairman/Administrator to correct his date of birth in certificate Serial No.Y2K 0056926, Roll No.311670 Registration No.B-99-FGSS311670 of Middle Standard issued on 31.05.2000 and certificate serial No.TT3U-001146, Roll No.1312127, Registration No.B-99 FGSS-311670 of Matriculation Examination issued on 22.06.2003.

[3] On the basis of pleadings and submissions made by learned counsel for the parties, the learned trial Court framed the following issues:-

- “1. Whether the name of the plaintiff is Ashwinder Kumar and not Ashwani Kumar? OPP
2. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP
3. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the suit is bad for the non-joinder of necessary party? OPD

6. *Whether the relief claimed by the plaintiff is barred by the limitation? OPD*

7. *Relief.”*

[4] That on the basis of evidence led by the parties and submissions made, issue Nos.1 to 4& 6 were decided against respondent No.1/plaintiff and in favour of the defendants, while issue No.5 was not pressed, consequentially, the civil suit filed by respondent No.1/plaintiff was dismissed.

[5] Learned Counsel for the appellant contends that the learned Appellate Court reversed the well reasoned judgment and decree dated 16.10.2018 passed by the learned trial Court by recording that the family of respondent No.1/plaintiff was a simpleton family and it could not be expected from them to act with utmost care and wrong recording of date of birth was an unintentional mistake which could have taken place at the time of entering the name of respondent No.1/plaintiff and the nature of grievance of respondent No.1/plaintiff was in the nature of recurring cause of action, therefore, the suit filed by respondent No.1/plaintiff could not be said to be time barred. Accordingly, findings of the learned trial Court as recorded in the judgment and decree dated 16.10.2018 were set aside, appeal allowed with costs and the suit filed by respondent No.1/plaintiff, decreed.

[6] Learned Counsel for the appellant contends that the judgment and decree dated 05.07.2022 passed by the learned Additional District Judge, Fatehgarh Sahib is perverse as respondent No.1/plaintiff passed 8th class examination on 31.05.2000, 10th class examination on

date of birth of respondent No.1/plaintiff is recorded as 10.08.1981 whereafter respondent No.1/plaintiff joined service as a Peon in the Municipal Corporation but the suit out of which the instant appeal arises was filed on 16.07.2016 whereas on the basis of date of birth dated 10.08.1981, respondent No.1/plaintiff attained the age of 18 years on 09.08.1999 and on the basis of claimed date of birth dated 10.08.1984, respondent No. 1 / plaintiff attained the age of 18 years on 09.08.2002, therefore, the civil suit filed on 16.07.2016 by no stretch of imagination could be said to be within limitation, therefore, the suit ought to have been dismissed on this ground alone.

[7] Learned Counsel further contends that as per the Punjab School Education Board (Correction in date of birth or Father's name or Mother's name) Regulations, 1988 as approved by the appellant-Board in its meeting held on 31.08.1988 and 31.10.1988 and further amended vide notification dated 29.08.2017, correction in date of birth is permissible in consonance with birth certificate of the candidate.

However, as per Regulation 6(iv), in case the candidate applying for correction in date of birth is a government / semi government employee, then his case for correction of date of birth is required to be recommended by his employer, whereas in the instant case respondent No.1/plaintiff did not submit any application nor produced any such recommendation from his employer for seeking correction of date of birth in his certificates, therefore, the claim of respondent No.1/plaintiff even otherwise, apart from being beyond the period of limitation provided under the Limitation Act, 1963 is de hors the Regulations.

Relevant extract of the Regulation is reproduced as under:-

father's name or mother's name shall be dealt with as under:-

- (a) If the request for such a correction is due to clerical mistake on the part of the school at the time of filling the admission form and the same is brought to the notice of office not later than two years after the dispatch of certificate, it shall be processed by the examination branch concerned and the correction shall be allowed by the office.
- (b) If any further mistake on the part of the office shall be rectified with the approval of the Secretary without payment of any fee.

4(ii) That the correction in the date of birth or Father's name or Mother's name shall be allowed on the basis of birth certificate issued or rectified by the competent authority i.e. District Civil Surgeon or other issuing authorities subject to the verification of the birth certificate and payment of prescribed fee. The correction in date of birth or father's name or mother's name beyond the five years shall be allowed with no specification of limitation of period/time.

6. The head of the branch before arriving at a final decision shall examine the following documents, the responsibility for production of which shall be of the applicant:

- (i) the original admission and withdrawal register of the school where the application got admission for the first time in infant class. In case that register is not available the other next available admission and withdrawal register shall have to be produced.

(ii) birth certificate from the Panchayat/Municipal Committee duly verified by the Local/Additional Registrar of Births and Deaths:

(iii) The admission and withdrawal register in which the wrong entry was made or transferred to;

(iv) any other record considered necessary by the office:

Provided that every applicant, applying for correction in date of birth, shall also submit along with his application an affidavit duly attested by the 1st Class Magistrate to the effect that he is not serving in any Government or Semi Government department.

In case he is employed in any of the above departments he shall get his application recommended by his employer.”

[8] Learned Counsel relies on the decision of Hon’ble the Division Bench of this Court in **Ambika Kaul vs Central Board of Secondary Education and others, 2015 (3) SCT 350** to contend that correction in date of birth has to be applied for within three years of attaining age of majority and in view thereof, the Civil Suit filed by respondent No.1/plaintiff being much beyond the period of three years after attaining majority was clearly time barred and could not have been entertained under any circumstances. Relevant extract of the decision in Ambika Kaul’s case (Supra) is reproduced as under:-

[40] The other question which may arise is that the date of birth was given in the school records by the parents of a child when he was minor, therefore a minor on attaining the date of majority can dispute the

date of birth given in the matriculation certificate.

[41] Section 6 of the Limitation Act, gives a right to the person suffering from legal disabilities including a minor to assert his rights after the cessation of such disability. The right to seek correction in the actual date of birth on the basis of certificate issued by the Register, Births and Deaths, is not free from doubt after long years on the basis of rule of estoppel, but for the purposes of the present appeals, we will assume that a person has a legal right to seek correction of his date of birth on attaining the majority.

[42] The fact is that every person grows with the date of birth as mentioned in the matriculation certificate. He is aware of such date of birth. Giving allowance of minority will lead to uncertainties and inconsistencies in the records of public authorities. Therefore, though a person is estopped to dispute the date of birth entry recorded in the matriculation certificate, but even if he approaches the Civil Court to seek exclusion of the minority period in terms of Section 6 of the Limitation Act, 1963, such suit cannot be entertained after three years from his alleged date of attaining the age of majority. In no case, the date of birth recorded in the matriculation certificate should be corrected after three years of attaining majority on the basis of date of birth in the birth certificate.

[43] In Darshan Singh v. Gurdev Singh, (1994)6 SCC 585, the Hon'ble supreme Court 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 held to the following effect:-

"....third column of the Schedule might have expired by efflux of time, Section 6 elongates the right and enlarges the limitation and entitles the minor, insane or idiot to institute the suit or make the application within the same period prescribed in the third column of the Schedule to the Act, after the disability to which the minor, the insane or the idiot has been subjected to, ceased. Section 8 makes special exception to Section 6. In other words, notwithstanding the availability of limitation in the third column of the Schedule prescribed under the relevant article, the suit or application shall be filed within three years from the cessation of the disability or the death of a person affected thereby engrafting the language thus:

"8. Special exceptions.- Nothing in Section 6 or in Section 7 applies to suit to enforce rights of preemptions, or shall be

deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period of limitation for any suit or application."

4. In other words, Section 8 is a proviso to Section 6 or 7. combined effect of Sections 6 and 8 read with third column of the appropriate article would be that a person under disability may sue after cessation of disability within the same period as would otherwise be allowed from the time specified therefor in the third column of the Schedule but special limitation as an exception has been provided in Section 8 laying down that extended period after cessation of the disability would not be beyond three years from the date of cessation of the disability or death of the disabled person."

LPA No. 1613 of 2014 (Ambika Kaul vs. CBSE and others)

[47] In this case, the School certificate records the date of birth as 4.7.1992, whereas she has claimed that her actual date of birth is 4.7.1991. She has approached this Court in the year 2014 i.e. when on the basis of her actual birth certificate she was more than 21 years of age. Thus, she could not seek correction of date of birth on the basis of the

certificate issued by the Registrar, Births and Deaths.

The Learned Single Judge has rightly held that the correction in date of birth must have been applied within three years of her attaining the age of majority.

In view thereof, we do not find any error in the order passed by the learned Single Judge. Hence, LPA No. 1613 of 2014 is dismissed.”

[9] Learned Counsel for the appellant contends that in the circumstances, the judgment and decree dated 05.07.2022 passed by the learned Additional District Judge, Fatehgarh Sahib accepting the Appeal and decreeing the Civil Suit filed by respondent No. 1 / plaintiff, by reversing the judgment and decree dated 16.10.2018 passed by the learned Additional Civil Judge (Sr. Div.), Fatehgarh Sahib whereby Civil Suit No. CIS-516-16 was dismissed is legally unsustainable and the following substantial questions of law arise for determination by this Court in the instant appeal :

i) Whether the civil suit out of which the instant appeal arises was filed beyond the period of limitation consequentially, reversal of the judgment and decree of the learned trial court and decreeing the suit is legally unsustainable ?

ii) Whether in the absence of respondent No. 1 / plaintiff having sought redress from the appellant and that too in accordance with the regulations by getting his application recommended from his employer, the civil suit was not maintainable and ought to have been dismissed ?

[10] Learned Counsel for respondent No.3 i.e. Local Registrar, Births and Deaths, Bassi Pathana, Tehsil Bassi Pathana, District Fatehgarh Sahib contends that no certificate was issued by respondent No.3 evidencing date of birth of respondent No.1/plaintiff as 10.08.1984 and that the birth certificate reflecting date of birth of respondent No.1/plaintiff as 10.08.1981 issued by respondent No.3 is on the basis of record supplied by the Registrar Births and Deaths, Office of Civil Surgeon, Civil Hospital, Fatehgarh Sahib, Tehsil and District Fatehgarh Sahib (respondent No.4, herein).

[11] I have considered the submissions of learned counsel. Admittedly, respondent No. 1 plaintiff (filed Civil Suit No.CS-516-16 on 16.07.2016 inter alia for the issuance of a Mandatory Injunction for directing the Punjab School Education Board, Mohali through its Chairman / Administrator to correct his date of birth in certificate Serial No.Y2K 0056926, Roll No.311670 Registration No.B-99-FGSS311670 of Middle Standard issued on 31.05.2000 and certificate serial No.TT3U-001146, Roll No.1312127, Registration No.B-99 FGSS-311670 of Matriculation Examination issued on 22.06.2003. Secondly, *as per the provisions of the Punjab School Education Board (Correction in date of birth or Father's name or Mother's name) Regulations, 1988 as approved by the appellant-Board in its meeting held on 31.08.1988 and 31.10.1988 and further amended vide notification dated 29.08.2017, correction in date of birth is permissible in consonance with birth certificate of the candidate but every applicant, applying for correction in date of birth, is required to submit along with his application an affidavit duly attested by the 1st Class Magistrate to the effect that he is*

case he is employed in any of the above departments he is to get his application recommended by his employer. Admittedly, respondent No. 1 / plaintiff who is working in a Municipal Corporation never submitted any application nor affidavit of his not being employed in a government / semi government department nor submitted an application duly recommended by his employer as per the Regulations.

Apart from the above, Respondent No.1 / plaintiff passed 8th class examination on 31.05.2000, 10th class examination on 22.06.2003 and in the certificates issued qua the aforesaid examinations, date of birth of respondent No.1 / plaintiff is recorded as 10.08.1981 whereafter respondent No.1 / plaintiff joined service as a Peon in the Municipal Corporation but the suit out of which the instant appeal arises was filed on 16.07.2016 whereas on the basis of date of birth dated 10.08.1981, respondent No.1 / plaintiff attained the age of 18 years on 09.08.1999 and on the basis of date of birth dated 10.08.1984, attained the age of 18 years on 09.08.2002, therefore, the civil suit filed on 16.07.2016 by no stretch of imagination could be said to be within limitation. In the circumstances, the suit was not maintainable being beyond stipulated period of limitation nor can it be said that in the light of the factual position there was any continuing cause of action.

In view of the Civil Suit having been filed on 16.07.2016 i.e. more than three years beyond attaining majority for correction of date of birth to 10.08.1984 instead of 10.08.1981 and on basis of date of birth 10.08.1981, respondent No.1 / plaintiff attaining the age of 18 years on 09.08.1999 and on the basis of claimed date of birth i.e. 10.08.1984, attaining the age of 18 years on 09.08.2002, the civil suit filed on

dismissed in view of the provisions of the Limitation Act, 1963 as well as the decision in Ambica Kaul’s case (Supra). Besides, no circumstances were brought on record so as to substantiate the claim to be giving rise to a continuing cause of action in accordance with the provisions of the Limitation Act, 1963. Further the civil suit was in derogation of the regulations applicable having been filed without submitting an application for correction of the date of birth as also without getting the application recommended from the employer. Accordingly, the substantial questions of law framed above are answered in favour of the appellant and against respondent No. 1 plaintiff. Consequentially, the finding in judgment and decree dated 05.07.2022 passed by the learned Appellate Court holding the civil suit to be not hit by limitation on account of continuing cause of action is reversed. Further the civil suit is also held to be not maintainable having been filed in derogation of the regulations applicable. Accordingly, judgment and decree dated 05.07.2022 passed by the learned Appellate Court, reversing the judgment and decree dated 16.10.2018 passed by the learned Additional Civil Judge (Sr. Div.) Fatehgarh Sahib is held to be legally unsustainable and is accordingly set aside, while judgment and decree dated 16.10.2018 passed by the learned Additional Civil Judge (Sr. Div.) Fatehgarh Sahib is upheld. Consequentially, Civil Suit No. CIS-516-16 filed by respondent No.1/plaintiff stands dismissed. Regular Second Appeal allowed as above.

(B.S. Walia)

Judge

29.04.2023

‘Amit’

Whether speaking/ reasoned

:

Yes/No

Whether reportable

:

Yes/No