

LPA No.1343 of 2018(O&M)

Sr.No.207

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

**CM-3653-LPA-2018 in/and
LPA No.1343 of 2018(O&M)
Date of Decision: 20.01.2023**

Central Board of Secondary EducationAppellant

versus

Mansi Mudgil

.....Respondent

**CORAM: Hon'ble Mr. Justice G.S.Sandhawalia
Hon'ble Ms. Justice Harpreet Kaur Jeewan**

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

None for the respondent.

Harpreet Kaur Jeewan, J.

CM-3653-LPA of 2018

Present application has been filed under Section 5 of the
Limitation Act, 1961 for condonation of delay of 138 days in filing
the appeal.

For the reasons stated in the application, the same is
allowed. Delay of 138 days in filing the appeal is condoned.

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Allowed as prayed for.

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1. Present letter patents appeal is filed against the order dated 16.03.2018 passed by the learned Single Judge in CWP No.2096 of 2018 whereby the said petition was allowed and a direction was issued to the appellant (respondent in CWP) (hereinafter referred as the “appellant Board”) to consider the application of the respondent (petitioner in CWP) (hereinafter referred as the “respondent”) for correcting her Date of Birth in the Matriculation Certificate.

2. The prayer in the present appeal is for setting aside the order passed by the learned Single Judge dated 16.03.2018 and for dismissal of the writ petition bearing CWP No.2096 of 2018 filed by the respondent.

3. The respondent has pleaded that she had passed her Secondary School Examination from the appellant Board (Central Board of Secondary Education) in the year 2001 and she was a student of MLS DAV Public School, Narnaul, District Mahendargarh. In the Matriculation Certificate the Date of Birth (Annexure P-1) of the respondent is mentioned as 24.11.1985 and the respondent got married in the year 2013 and thereafter, she wanted to apply for a Visa to accompany her husband who got an assignment in Germany. There was a requirement to attach the birth certificate, therefore the respondent obtained her Date of Birth Certificate from the Registrar (Births and Deaths) Municipal Corporation, Gurugram issued under the Registration of Birth and Deaths Act, 1969 (hereinafter referred to as, ‘the Act’) and found that her date of birth

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in the said certificate has been mentioned as 24.11.1984 instead of 24.11.1985. It was further pleaded that the appellant had obtained her Aadhar Card (Annexure P-5) where date of birth is correctly recorded as 24.11.1984 which is in resonance with the birth certificate. She came to know about the wrong entry in her date of birth in the Matriculation Certificate only when she compared the same at the time of completing the Visa formalities. After knowing about the clerical mistake in the Matriculation Certificate, the respondent (petitioner in CWP) immediately approached the appellant (respondent in CWP) and submitted a representation for correction of her Date of Birth from 24.11.1985 to 24.11.1984 in the Matriculation Certificate. The said representation was not decided by the CBSE, therefore, the respondent filed the writ petition.

4. Learned Single Judge allowed the writ petition by observing that the respondent has already obtained her Aadhar Card in which her Date of Birth is mentioned as 24.11.1984; the respondent would face difficulty through out as her date of birth in the Matriculation Certificate as such would not match with the date of birth as mentioned in the Aadhar Card. The learned Single Judge was impressed with the fact that the registration of the date of birth of the respondent with the Registrar (Birth & Death) was got done on 26.11.1984 i.e. two days after her birth, therefore, there is no chance of any manipulation in the date of birth certificate of the respondent.

5. The appellant placed reliance on Clause 69.2 (iv) of the Examination Bye Laws of the CBSE as per which there is limitation

provided for seeking such type of correction i.e. period of one year from the date of declaration of the result. Learned Single Judge considered the said submissions and observed while relying upon the decision of the Kerala High Court rendered in the case of **Arun vs. Central Board of Secondary Education; 2010(126) FLR 94** that the period of limitation provided in Clause 69.2 (iv) for making the application for correction in date of birth is only for the administrative convenience alone and is not the period of limitation to bar the remedy as provided under the Limitation Act, 1961.

6. Learned counsel for the appellant Board has submitted that the Examination Bye-Laws of CBSE provide that there would be no change in the Date of Birth once recorded in the Board records. However, corrections regarding typographical error and other error can be made to make the certificate consistent with the school record provided that correction in the school record should not have been made after the submission of the application form for admission to examination to the Board. It was further submitted that the learned Single Judge has not appreciated that the entry in the date of birth was made by the CBSE in accordance with the record supplied by the school and there was no allegation that the school had supplied wrong Date of Birth of the respondent to the CBSE. Learned Single Judge has also not taken into consideration the law laid down by the Division Bench of this Court in the case of **Ambika Kaul vs. Central Board of Secondary Education and others; LPA 1613 of 2014** decided on 21.05.2015 wherein it was held that if a person does not

give date of birth certificate issued by the Registrar at the time of admission to school, he does at his own peril. Once he disclosed a particular date of birth, completed education; he is estopped to rely upon upon the birth certificate issued by the Registrar (Births and Deaths) at a later stage of life. Raising the aforesaid submissions, it was contended that the decision by the learned Single Judge is liable to be set aside.

7. On other hand, learned counsel for the respondent has opposed the aforesaid arguments referring to the reasons recorded by learned Single Judge.

8. We have considered the aforesaid submissions. The respondent was only seeking a decision on her representation dated 08.01.2018 (Annexure P-6), which has been permitted by the learned Single Judge. Admittedly, the Date of Birth given in the certificate issued by the appellant Board is 24.11.1985 whereas the certificate issued by the statutory authority i.e. Registrar (Births and Deaths) Municipal Corporation, Gurugram is 24.11.1984 (Annexure P-4). It is not disputed that the name of the mother and father of the respondent i.e. Mansi Mudgil matches with the name in the certificate issued by the appellant Board (Annexure P-1). Learned Single Judge has rightly observed that the birth of the petitioner was got registered on 26.11.1984 i.e. 2 days after the date of birth mentioned in the said certificate and there are no chances of manipulation at that time. The respondent had passed her All India Secondary School Examination in the year 2001 and no doubt she has filed her representation dated

08.01.2018 (Annexure P-6) with delay but a very important factor has been rightly noticed by the learned Single Judge that her Date of Birth mentioned in the Aadhar Card matches with her date of birth mentioned in the birth certificate issued by the competent authority i.e. 24.11.1984. In such circumstances, there does not appear any other reason except the fact that it was only a clerical mistake which was made at the time of admission of the respondent in the school.

9. The appellant (respondent in CWP) has relied upon the bar of limitation as per Bye-Laws 69.2 as per which the correction is permissible only within two years of the date of declaration of result of class X/XII examination. The relevant Bye-Laws are reproduced as under:-

“Rule 69.2 change/Correction in Date of birth.

(i) No change in the date of birth once recorded in the Board's records in respect of those candidates who have appeared for the Secondary/Senior Secondary Examinations conducted by the Board shall be made. However, correction to correct typographical and other errors to make the certificate consistent with the school records can be made provided that corrections in the school should not have been made after the submission of the application form for admission to examination of the Board.

- (ii) *Such correction in date of birth of as 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 the candidate/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 along with attested copy of the Certificate issued by the Municipal Authority, if available, as proof of date of birth submitted at the time of seeking admission; 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 along with documents mentioned in by laws 69.2 (iii) shall be entertained by the Board in respect of those candidates who have taken the examinations conducted by the Board only within two years of the date of declaration of*

result of class X/XII examination as the case may be. In case of those candidates who have appeared for the examinations conducted by the Board both at Secondary and Senior Secondary Levels, the period of two years shall be counted from the date of declaration of result of Secondary School Examination. No correction whatsoever shall be made on application submitted after the said period of two years.”

10. The Apex Court in ***Mohd. Yunus Khan Vs.U.P. Power Corporation Ltd. and others 2009 (1) SCC 80*** held that even if there was any provision fixing a time frame for filing application for correction of date of birth, the same would not be of much significance, if the mistake could be shown in recording the date of birth and there was no delay on part of the person. Relevant portion of the judgment reads as under:-

“No material has been placed before us in regard to existence of a statutory rule fixing a time frame for filing an application for correction of the date of birth in the service record. Even if there was such a provision, the same, in our opinion, would not be of much significance as respondents had not shown that the mistake in the matter of recording of date of birth in the service record was known to appellant at any earlier point of time. If appellant's contention is correct that he came to learn about it

only in April, 1988 whereafter he filed a representation, it must be held that there was no delay on his part in this behalf. An employee may take action as is permissible in law only after coming to know that a mistake has been committed by the employer.”

11. Similarly in ***R.K. Jangra v. State of Punjab and others 2009(5) SCC 703***, the Apex Court set aside the order of this Court which had relegated the employee to avail his ordinary remedy before a Civil Court and directed the State to consider the representation of the appellant in pursuance of the rules framed since he wanted his representation to be considered in the proper perspective. The relevant observations read as under:-

“5. The High Court without going into the merits of the case rejected the petition by its impugned order dated 29.1.2007. The High Court has observed :-

"It will be just and appropriate to relegate the appellant to avail his ordinary remedy before a Civil Court. Aggrieved by the said order, appellant is before us by this special leave petition."

6. We have heard learned counsel for the parties.

7. Appellant, in spite of his attempts right from the year 1981, has failed to come out of the perplexing web of the bureaucracy. Appellant who is due to retire in January 2010 is praying for another extra year of service. He has

made several representations in this regard without getting any results. At this juncture he only wants his representation being considered in proper perspective and in accordance with law and to give him one more year of extension of service by making appropriate correction of his date of birth in the service records.

8. In view of the above discussion, in the peculiar facts and circumstances, we direct the competent authority/Principal Secretary, Department of Irrigation, Punjab, Chandigarh to consider the representation filed by the appellant on 8.5.1987, in the light of documents and material produced by him, within a month from the date of this order, if the representation made by the appellant is available with the respondent untrammelled by any of the observations made in the earlier orders. If such representation is not available in their records, the competent authority will call upon the appellant to file a fresh representation with all the particulars required and consider the same within a reasonable time.

9. In view of the above discussion, the appeal is allowed. The impugned order passed by the High Court is set aside. No order as to costs.

Appeal allowed.”

12. Similarly in ***Narinder Kaur v. Punjab and Haryana High Court and others 2011(2) RSJ 500***, the order rejecting the

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request made by the employee for effecting change in her date of birth was set aside in view of the presumptive value which is attached to the births and deaths record and employee was held entitled to the correction as per the record maintained by the local Registrar of Births and Deaths.

13. Learned counsel for the appellant has relied upon the decision of the co-ordinate Bench of this Court in ***Ambika Kaul's case(supra)***. In LPA No.373 of 2015 (***Shubham Attri vs. Central Board of Secondary Education and others***) which was also decided alongwith the case of ***Ambika Kaul(supra)***, it was observed that the Rules of the Central Board of Secondary Education do not permit any change of Date of Birth except in case of clerical and arithmetical mistake that too on the basis of the entry in the admission form. In view of the said facts it was held that appellant should have been directed to approach the Civil Court, yet since he has approached this Court without taking any advantage of Matriculation Certificate for any purpose and seeks correction in the Date of Birth for the purpose of obtaining passport, the appellant(respondent in CWP) was directed to alter his Date of Birth to be the same as in the Birth Certificate issued by the Registrar (Births and Deaths). The benefit was given to the appellant-Shubham Attri even in the said appeal decided in ***Ambika Kaul's (supra)*** matter.

14. In view of the facts of the present case that the respondent has never misused the entry in the certificate issued by the appellant and entry in the Aadhar Card as well as the entry in the

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certificate issued by the Registrar (Births and Deaths) that too when the entry in the Birth Certificate was recorded within a period of two days after the birth of the respondent, in such circumstances in case the Date of Birth of the respondent is not corrected in the Matriculation Certificate this would lead to miscarriage of justice, and the respondent would face great difficulty at all levels for all times to come whereas no loss would be caused to the appellant Board.

15. Hence, keeping in view the decision relied upon in the case of *Mohd. Yunus Khan(supra)* and *R.K. Jangra(supra)* by the Hon'ble Apex Court, we are of the considered opinion that the decision rendered by the learned Single Judge requires no interference and same is upheld. The appellant-Board is directed to consider the application of the respondent which is attached with the writ as Annexure P-6, within a period of one month from the date of receipt of certified copy of this order and after correcting her Date of Birth in the Matriculation Certificate the same be issued to her within a period of 15 days thereafter.

(G.S.Sandhawalia)
Judge

(Harpreet Kaur Jeewan)
Judge

20th January, 2023

ShivaniKaushik

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No