

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

**RSA-1892-2018 (O&M)
DECIDED ON: 13.10.2023**

REKHA RANI

.....APPELLANT

VERSUS

**THE BOARD OF SCHOOL EDUCATION HARYANA
.....RESPONDENT**

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Mr. Adarsh Jain, Advocate
for the appellant.

SANJAY VASHISTH, J (ORAL)

1. Present Regular Second Appeal has been filed by the plaintiff against the concurrent findings of dismissal of the suit filed by her.

2. Plaintiff – Rekha Rani sought a decree of declaration of correction/rectification of the date of birth in the record of the defendant i.e. The Board of School Education, Haryana.

3. It is averred in the suit that plaintiff is daughter of Sh. Ramesh Chand and Saroj Sharma. As per the record of Health Department, her date of birth is recorded as 22.01.1987, but at the time of admission, same was wrongly mentioned as 22.01.1985.

Thus, by way of the suit filed by her (plaintiff), a declaration is sought that actual date of birth of the plaintiff is 22.01.1987 instead of 22.01.1985.

4. After the dismissal of the suit at the first instance by learned trial Court, in the appeal filed by the plaintiff, lower Appellate Court recorded a finding that the manner of putting signature on the affidavit by Ramesh Chand Sharma (PW-2), father of the plaintiff - Rekha Rani, shows that he is not an illiterate person, rather, he is a well-educated person. Therefore, lower Appellate Court has observed that it is beyond expectation that such an educated person would mention wrong date of birth of his own child in the school, at the time of her admission.

5. Learned lower Appellate Court also observed that plaintiff has not produced the birth certificate of her other brother and sisters to reach to a correct conclusion. Therefore, withholding of the material evidence/documents by the plaintiff has also forced the Court to take adverse inference against her.

6. Findings recorded in paragraph No.13 by learned lower Appellate Court is reproduced as under:-

“13. It is also contended by the plaintiff that seeing the date of birth of her brother and sisters, it has been clearly established that date of birth of plaintiff is 22.01.1987 and not 22.01.1985 as mentioned in her education Certificate. However, the plaintiff has not produced any education Certificate or birth Certificate of her brother and sisters to prove her contention. The plaintiff can very well establish this fact by producing their education as well as birth certificates but plaintiff has withheld those documents and it is well settled law that a person who has withheld any document, then an adverse inference is likely to be drawn against him/her. So, the contention of the plaintiff is not tenable.”

7. Another reason taken by lower Appellate Court for the purpose of dismissing the appeal is that the plaintiff had attained the age of majority in the year 2003, whereas, declaration by way of the present suit, is sought by her, by filing the suit on 31.08.2013. Thus, she approached the Court after more than 10 years of period, since, the time plaintiff had attained the age of majority.

Thus, declaratory suit filed beyond three years is held to be out of limitation.

8. Similar situation arose in other cases also, where almost similar prayer was made. One of such controversy was decided by this Court (Punjab and Haryana High Court), vide its judgment dated 21.05.2015 in LPA-482-2015 titled as **“Abhimanyu vs. Central Board of School Education”**.

While dealing with the similar issue, LPA Bench relied upon the other judgment dated 21.05.2015 in LPA-1613-2014 titled as **“Ambika Kaul v. CBSE and others”**, wherein, it was concluded that date of birth recorded in the Matriculation Certificate cannot be corrected in any case, beyond three years of attaining the age of majority.

9. Relying upon the said decision, in the case of **Abhimanyu (supra)**, High Court has also held that suit filed after 3 years of the cause of action is not maintainable.

Relevant part of the said judgment is reproduced here below:-

“In LPA No.1613 of 2014 titled Ambika Kaul v. CBSE and others, decided on 21.05.2015, the said judgment has

been examined. It has been held that a person is estopped to seek correction in the date of birth in the Matriculation Certificate once a date of birth is given other than the date of birth given in the certificate issued by the Registrar of Birth and Deaths. The Court held as under:-

“[21] In respect of the persons born prior to the applicability of the The Registration of Births and Deaths Act, 1969 in the Punjab & Haryana and Chandigarh, in the absence of any statutory provisions in respect of the birth, the entry in the matriculation certificate in terms of Section 35 of the Indian Evidence Act, was considered to be a relevant document. A matriculation certificate issued by the School Education Board was made basis of age while entering Government service as per the Civil Services Rules, as reproduced above and applicable in this part of the country. Therefore, even if there was discrepancy between the date of birth in the Municipal record and in the horoscope etc., then the date of birth in the matriculation certificate was made basis of age for the purposes of Government service that is on the basis of document which meets the test of public document in terms of Section 35 of the Evidence Act. However, it was subject to change in the manner prescribed in the Punjab Civil Services Rules and the Financial Rules. Though on the basis of the doctrine of Ante Litem Motam, a person cannot be permitted to dispute the entry of the date of birth in the matriculation certificate, yet the limited right granted to the Government servant could be exercised only in the manner contemplated in Annexure-A, of Punjab Civil Services Rules, as reproduced above. Para 2 of the Annexure A has lost its purpose after enactment of the Act, where the reference is made to other sources of information such as Janam Patris or Horoscope.

[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.”

It was also held that the date of birth given in the Matriculation Certificate can not be corrected in any case beyond three years of attaining majority. The relevant extract from the said judgment reads as under:-

“[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.”

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[45] The right to seek actual date of birth has to be exercised within three years of attaining the majority on the basis of the birth certificate issued by the Registrar of Births and Deaths. But, after expiry of period of three years from the cessation of disability, no person can rely upon the birth certificate. He is bound by the date given in the matriculation certificate. Therefore, in any case, the right of a person to seek actual date of birth on the basis of entry in the birth certificate by the Registrar of Births and Deaths is three years after attaining the majority on the basis of date of birth in the said certificate.”

The date of birth given in the Matriculation Certificate which is at variance with the date of birth recorded in the records of Registrar of Births and Deaths can be corrected on the proof of the fact that date of birth recorded in Matriculation Certificate was not based upon any declaration or a document filed by the parents of the candidate or that the school has not maintained record of admission in proper manner and in no other circumstance.

In the present case, as per the appellant, the date of birth as per the certificate from the Registrar of Birth and Deaths is 21.08.1990. The appellant has approached this Court in the year 2015 i.e. much beyond the period of three years after cessation of minority.

Consequently, in view of the aforesaid judgment, we do not find any merit in the present appeal.

Dismissed.”

10. Taking note of the facts and circumstances of the present appeal and the submissions addressed by the counsel for the appellant before this Court and taking note of law already laid down by this Court (Punjab and Haryana High Court) *qua* the controversy involved in the present appeal, this Court does not find any substantial reason to interfere with the findings recorded by the Courts below.

11. Thus, by maintaining the same, present appeal stands **dismissed**.

12. Since, the present appeal has been considered and the facts in detail have already been argued and discussed by this Court in the present judgment, there is no need to pass a separate order in the application regarding the condonation of delay in refiling of the appeal.

(SANJAY VASHISTH)
JUDGE

13.10.2023

Lavisha

Whether speaking/reasoned

Yes/~~No~~

Whether reportable

Yes/~~No~~