

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Rai Chattopadhyay

W.P.A No. 10798 of 2021

Md. Saidur Rahman
Vs.
The State of West Bengal & Ors.

For the Petitioner : Mr. Anirban Datta, Adv.
: Mr. Probal Sarkar, Adv.

For the State : Mr. Sk Md. Galib, Adv.
: Mr. Subhra Nag, Adv.

Heard on : 23/08/2024

Judgment on : 23/08/2024

Rai Chattopadhyay, J. :-

- (1) The matter relates to correction of date of birth of the petitioner. In the birth certificate of the petitioner issued by the Panchayat, in the PAN Card, EPIC Card, Aadhar Card and Driving Licence of him, his date of birth has been mentioned to be March 11, 1976, which the petitioner has claimed to be the actual and proper recording. This has further been corroborated in the 'transfer certificate' issued by the school authority, at

the time of his leaving the school after class-IV, the petitioner says. Contrarily, in his Admit Card for school leaving examination and the certificate thereof, the same has been mentioned as March 11, 1974. The petitioner has stated, that the date of birth of him, as mentioned in the admit card and certificate, is erroneous.

- (2) The petitioner, by submitting an application January 5, 2020, has sought for correction of his date of birth, as mentioned in the admit card and certificate, before the issuing authority, that is, the West Bengal Board of Madrasah Education/respondents No.2 to 5, but allegedly to no avail. Hence, he has filed this writ petition. His prayer is that the said respondent Board be directed to immediately correct the date of birth in the admit card and certificate. In this connection the petitioner has stated that he has appeared before the Board President on March 25, 2021 for hearing, though no order has yet been issued by the same, effecting necessary correction in those documents.
- (3) Ld. Advocate Mr. Anirban Datta for the petitioner and Ld. Advocate Mr. Sk Md. Galib for the C.I.D West Bengal, are present in Court today, at the time of hearing.
- (4) Necessary is to mention that the Court had earlier directed the C.I.D West Bengal, to cause an enquiry in this case, upon recording its finding that the birth certificate issued by the Panchayat, is a suspicious document. An enquiry has been conducted and report thereof is filed in Court today and taken on record.

- (5) Mr. Anirban Datta for the petitioner has submitted that the transfer certificate of the school would show the date of the petitioner as March 11, 1976, which should have been taken into consideration by the Board, that being an authentic document issued by the school authority. Thereafter, he has referred to another document that is birth certificate of the petitioner issued by the panchayat, showing the date to be March 11 1976. Mr. Anirban Datta for the petitioner would submit that the birth certificate being an authentic document as the proof of age of a person, should have been considered by the respondent/Board, for correction of its own record, like admit card and certificate, issued to the petitioner, with erroneous recording of his date of birth. Mr. Anirban Datta, for the petitioner would refer to the admit card of the elder brother of the writ petitioner to suggest that considering the date of birth of the elder brother recorded therein and that of the petitioner recorded in his admit card, one can find a difference of 4 days, between the said two dates of birth. He says that as such, the recording in the admit card of the petitioner is evidently erroneous, which requires correction. He would further submit that the respondent/Board has already concluded petitioner's hearing with respect to his prayer for correction of date of birth, on March 25, 2021 but has not yet communicated to the petitioner, its final decision, as regards the grievance and prayer of the writ petitioner. Therefore, Mr. Anirban Datta, for the petitioner would submit that the instant writ petition may be allowed, with the direction upon the respondent/Board, to immediately take steps for necessary corrections, as per the documents mentioned above, to be incorporated in the credentials of the writ petitioner.
- (6) Mr. Sk Md. Galib, for the C.I.D. West Bengal, would rely upon the report submitted in Court today. He would say that in the certificate dated

January 5, 2020, the headmaster of the school has declared the date of birth of the petitioner to be March 11, 1976. He would further show that the said headmaster has certified regarding non-availability of the original admission register in school. Mr. Sk Md. Galib would refer further a letter of the headmaster of the school dated November 23, 2021, written to the Deputy Superintendent of police, CID, Malda, in which the headmaster has written that admission register of Madrasah for the period 1978 to 1992 has been lost. He has stated further that previously he was wrongly informed that the admission register as above was seized by police in connection with a case, on November 21, 1995, though open verification of the seizure list no such seizure would be evident. The headmaster, in the said letter would further say that the original transfer certificate of the petitioner could not be found, at the first instance for which there has been a delay in forwarding the petitioner's application to the Board. The same was traced at a subsequent point of time. However, it has further been stated that after forwarding the application of the petitioner to the Board, the original transfer certificate is lost again and not traced yet. The headmaster has informed that a general diary has been lodged for the same on March 23, 2021, at Pakhuria Police Station. By referring to those documents and some statements recorded by the CID during enquiry, it has been submitted that petitioner's case is unsubstantiated in the said enquiry.

- (7) The petitioner has sought for corrections to be made to his admit card and certificate of Board examinations, with respect to the date of birth of him, mentioned therein. The law relating to correction of date of birth is well settled now. An application therefor should be made and entertained as per relevant rules/regulations applicable. Such correction should only be based upon irrefutable proof and the onus to produce such evidence

lies only with the applicant, in this case the writ petitioner. Also, that inordinate and unexplained delay in making application for correction would be a justified and cogent ground for refusal of any relief to the applicant, in this regard. It is trite that correction of date of birth is not a matter of right, even if there is strong evidence that the recorded date of birth is incorrect.

- (8) The observation of the Supreme Court in the case of ***Union of India vs. Harnam Singh*** reported in ***(1993) 2 SCC 162***, is worth noting in this regard. The court has held there -

“it is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the government servant must do so without any unreasonable delay.”

- (9) In ***Secretary and Commissioner, Home Department vs. R. Kirubakaran***, reported in ***(1994) Supp (1) SCC 155***, the Hon'ble Supreme Court has said that:

“An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for

years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book.”

- (10) In the light of the law as settled and enumerated above, the petitioner's case is to be considered. Onus is upon him to prove with irrefutable and conclusive evidence, the fact that the date of birth as has been recorded earlier, is erroneous. The petitioner has made endeavour to cite some evidence to prove his such contention. Those are principally, the copy of

a transfer certificate issued by the school and a birth certificate issued by the Panchayat. So far as the transfer certificate is concerned, the original thereof is not produced. The Head of the Institution has written that initially the same was not traced, but has been found later on. However, after the application of the petitioner for correction was forwarded to the Board, the same has been lost again. Therefore, the school has not been able to provide the same to C.I.D, at the time of enquiry. Isn't it too realistic a coincidence to raise confidence and belief? - the Court asks itself. Be that as it may, neither the original of the said document is available, nor is available the original or any authenticated copy of the admission register in the said school. Thus, credibility of the said document is far from being irrefutable or conclusive.

- (11) A birth certificate of the panchayat has been issued for the petitioner. The petitioner has heavily relied on the same as regards the recording of his date of birth is concerned. The provision under *section 7 of the Bengal Births and Deaths Registration Act 1873*, may be noted in this respect, which is as follows :

“7. Persons bound to give information of birth. -

The father or mother of every child born within such area, or in case of the death, illness, absence or inability of the father and mother, the midwife assisting at the birth of such child, shall, within eight days next after the day of every such birth, give information, either personally or in writing to the registrar of the district, or by means of the chaukidar or other village-watchmen, or other person as provided in the last proceeding section, according to the best of his or her knowledge and belief, of the several particulars hereby required to be known and registered touching the birth of such child.

Penalty for neglect. - Any person who refuses or neglects to give information which it is his duty to give

under this section, shall be punishable at the discretion of the Magistrate with fine which may extend to five rupees:

Provided that not more than one person shall be punishable at the discretion of the Magistrate for such refusal or neglect to give information.”

- (12) The same has laid down that the information of birth of a child has to be provided to the district registrar by the father, mother or the midwife providing assistance at the time of birth of the child. *Section 10 (1) (i) of the Registration of Births and Deaths Act, 1969*, has provided that the midwife or any other medical or health attendant at a birth, shall be duty bound to notify birth of a child. In this case, even during an enquiry by the CID, no other corroborating factor has been revealed as to the source information, resulting into recording of the date of birth of the petitioner in the birth certificate, in the manner as it has been entered.
- (13) So far as the irrefutable or conclusive nature of evidence is concerned, which is required to be produced to seek correction of date of birth and onus for which lies upon the petitioner to discharge, the Court is constrained to say that he has failed miserably to discharge his such onus and provide indisputable, undeniable and clinching evidence.
- (14) Finding of the Supreme Court in the case of ***LIC vs Basavaraj*** reported in ***(2016) 15 SCC 781*** may be noted in this discussion:
- “5. The law with regard to correction of date of birth has been time and again discussed by this Court and held that once the date of birth is entered in the service record, as per the educational certificates and accepted by the employee, the same cannot be changed.”***

- (15)** The Court cannot but help noticing the time when the petitioner has come up with his prayer for correction of date of birth in the admit card and certificate issued by the Board. Admittedly, the petitioner has appeared in the Board examinations, in the year 1992. Thus, both the admit card and the certificate were issued to him by the respondent/Board, in the year 1992. He has come up with an application for correction of the same as regards the date of birth recorded, only in the year 2020. Thus, there has been a delay of long about 28 years for him to seek such redress. This is indeed an inordinate delay, for which the petitioner has not been able to offer any explanation. It is a fact not disputed by him that the documents have been in his possession since the year 1992 itself. According to the settled law, as discussed above, the petitioner was to justify as to why he has not come up with such prayer earlier, even after knowing, about the wrong entry having been made there. The law as settled in this regard and discussed above, prompts this Court to find such belated prayer of the petitioner to be liable to be dismissed. At the cost of reiteration, the Court says that the correction of date of birth would not be a matter of right for the petitioner, had he even been able to produce sufficient document for the same, particularly in view of the unexplained, inordinate delay by him, to come up with such a prayer.
- (16)** Lastly, it is also worth mentioning that the statute and rules governing the West Bengal Board of Madrasah Education, would not provide for correction of the document issued by the same, in a manner as prayed for by the petitioner.
- (17)** Thus, the present case is found to be meritless and devoid of any cogent ground. Hence, it is liable to be dismissed.

- (18)** Hence, the writ petition No. 10798 of 2021 is dismissed.
- (19)** Urgent photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

(Rai Chattopadhyay, J.)