

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 31708 of 2014

Reserved on : 11.03.2024

Pronounced on: 21.05.2024

Md. Khurshid Alam

...Petitioner

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Md. Mansoor Alam

... for the Petitioner

Ms. Koyeli Bhattacharyya

... for the WBBSE

Mr. Priyankar Saha

Ms. Mousumi Banerjee

... for the State

Rajarshi Bharadwaj, J:

1. The instant writ petition is preferred by one Md Khurshid Alam herein the writ petitioner challenging the letter dated 17.09.2013 by Deputy Secretary (Academic) and S P.I.O (HQ) dismissing application for correction of date of birth and name of father of the petitioner.

2. The facts of the case are that petitioner who appeared for Madhyamik (Secondary) Examination under West Bengal Board of Secondary Education in 1982 was issued an admit card recording his date of birth as 15.01.1965 instead of 10.01.1967 .The name of the petitioner's father was incorrectly

recorded as “Md Moin Ansari” instead of “Md Moin”. The petitioner came to know about such discrepancies in his admit card in 2010.

3. The petitioner on 13.04.2010 made a representation to the Secretary, West Bengal Board of Secondary Education herein respondent No.1 by filing an application form for rectification of date of birth and name of father which was not taken into consideration. Thereafter an application under The Right to Information Act, 2005 was filed on 20.11.2012 seeking information regarding order passed in response to application dated 13.04.2010.

4. The petitioner’s prayer for correction of the aforesaid particulars in the admit card was rejected by letter dated 17.09.2013 under Memo No. Inf/163/13 stating *“In response to the aforesaid application the relevant department has informed that as the Date of Birth denotes underage at the time of admission in Class V, that has been stated to be the cause of rejection of the prayer of Date of Birth correction”*

Thus, aggrieved by the preceding letter dated 17.09.2013 by Deputy Secretary (Academic) and S P.I.O (HQ), the present writ petition lies.

5. The Learned Counsel for the petitioner submits that as per Admission Register of Kendwa High School, the date of birth of the petitioner was 10.01.1967. However, the respondent authorities committed a clerical mistake in the Madhyamik admit card of the petitioner by recording an incorrect date of birth and name of father. Despite repeated representations made on 13.04.2010 and 20.11.2012 to correct the said mistakes, the respondent authorities continued to rely upon a fictitious date of birth supplied by the school authority without consulting the petitioner.

6. The petitioner who was born in the year 1967 was aged about nine years at the time of admission in Class V in 1976 and fifteen years at the time of Madhyamik examinations in 1982. The age once recorded in the Transfer Certificate of the previous school cannot be altered. The reason that the petitioner was underage thereby rejecting the application for correction of date of birth of the petitioner by the respondent authority is arbitrary and illegal.

7. The Learned Counsel for the respondent authorities submit that petitioner at the time of presenting his application for alteration of date of birth and name of father failed to produce Birth Registration Certificate or Voter's Identity Card or other relevant and valid documents to prove his actual date of birth. Entry of date of birth in the Admission Register of school cannot provide irrefutable conclusive proof as to date of birth and name of the father of the petitioner.

8. It is further submitted that the petitioner had no knowledge of the clerical error in the admit card since 1982 and in 2010, no sufficient cause was given by him to explain the inordinate delay in preferring an application for rectification of date of birth. By Circular No. Age/ G/I/October/77 published by the West Bengal Board of Secondary Education on 03.10.1997, the claim of the petitioner is barred by the following provision :

"8. If in spite of all possible precautions, any clerical error (including the case of any absurd date of birth) occurs, the fact should be reported to the Board either by the Headmasters Headmistress or by the legal guardian of the pupil through the Headmaster/Headmistress of the school for necessary correction in the entry of date of birth of the pupil.

The report should be accompanied with the following fee and documents, in original: (i) A fee of Rs. 2/- (two). This fee is payable by the school and not by the pupil. If the application is made after 31st July of the year in which the boy sits for the Madhyamik Pariksha (Secondary Examination) for the first time, but not later than 2 years from this date, a late fee of Rs. 2/- (two) is to be paid by the pupil, in addition to the usual fee of Rs .2/- (two) to be paid by the school.

(ii) A fee of Rs. 25/- (twenty-five) shall have to be paid, in a case of clerical error is reported to the Board after the period mentioned in 8(1) above, but not later than five years thereafter.

....(vii) No application for correction of clerical error shall be entertained after the expiry of the period mentioned above in 8(ii) except under special circumstances on the recommendation of Age Correction Committee of the Board."

9. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that letter by respondent authorities dated 17.09.2013 refusing correction of date of birth of the petitioner noted in his admit card is valid. This Court cannot interfere with the decision of the respondent authority thereby rejecting the petitioner's request.

10. It is a settled principle of law that correction of date of birth kept in records cannot be claimed as a matter of right; it is subject to the procedure and period prescribed by the concerned department. In the present case, the delay of twenty-eight years from the year of giving Madhyamik examination by the petitioner in filing an application of rectification is unreasonable and cannot be condoned.

11. The Hon'ble Supreme Court in the case of **Union of India -versus- Harnam Singh** reported in **1993 2SCC 162** held that "7. ..A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. 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. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigor and the

courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.”

12. In the case of **State of Tamil Nadu-versus- T.V Venugopalan** reported in **1994 6SCC 302** , the Hon’ble Supreme Court opined that “ 7... *The application for correction of the date of birth of an in-service employee should be made within five years from the date when the Rules had come into force.... If no application is made. after expiry of five years, the government employee loses his right to make an application for correction of his date of birth.*”

13. The petitioner ought to have encountered the aforesaid inconsistencies in the Admit Card at several instances namely, writing and declaring date of birth in his examination form of Higher Secondary Examination, High School Certificate and also entering as such in his service records and take appropriate action for alteration of the same. The request of the petitioner for rectification of Madhyamik Admit Card is disallowed as per Circular No. Age/G/I/October/77 published by the West Bengal Board of Secondary Education which prohibits the entertaining of representation for modification for recorded date of birth after five years from date of giving Madhyamik examinations.

14. In such view, the writ application being WPA 31708 of 2014 lacks merit and the same is dismissed accordingly.

15. There will be no order as to costs.

16. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

21.05.2024
PA (BS)