



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

242

RSA-6492-2017

Date of decision : 19.09.2024

Gurpyar Singh**..... Appellant**

versus

Central Board of Secondary Education and another..... Respondents**CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

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

Mr. B.S. Seemar, Advocate
for respondent No.1.

PANKAJ JAIN, J. (Oral)

1. Plaintiff is in appeal.
2. Plaintiff filed suit for declaration to the effect that date of birth of the plaintiff is 13.08.1998. As per the certificate issued by Registrar, Birth and Death Office of Civil Surgeon, Sirsa and the date of birth as mentioned in Senior Secondary School Examination Certificate bearing serial No.1375383 under Roll No.2186838, his date of birth has been wrongly recorded as 20.07.1997 which needs to be corrected.
3. It was pleaded by the plaintiff that at the time of admission, the parents of the plaintiff supplied the date of birth certificate to the school authorities. However, the same was wrongly recorded by the authorities as 20.07.1997 instead of 13.08.1998 The error came to the notice of the plaintiff only when he was in process of applying for the passport.



4. On notice, suit was contested by defendant No.2 denying that at the time of admission, parents of the plaintiff supplied the date of birth certificate of the plaintiff as 13.08.1998. It was claimed that plaintiff was admitted in VI class on 23.07.2010, wherein father of the plaintiff submitted his admission form declaring his date of birth as 20.07.1997. The transfer certificate issued by Headmaster of defendant No.1-school also shows his date of birth as 20.07.1997.

5. On the basis of the pleadings, the suit filed by the plaintiff was put to trial framing following issues:-

- “1. Whether the plaintiff is entitled to declaration as prayed for? OPP.
2. Whether plaintiff is entitled to mandatory injunction as prayed for? OPD.
3. Relief.”

6. Suit was dismissed by the Trial Court holding that once the plaintiff failed to prove that the birth certificate issued by Registrar Birth and Death, was supplied to the school, he is thus stopped from claiming correction in the date of birth. Ratio of law laid down by Division Bench of this Court in **LPA No.1613 of 2014 dated 21.05.2015** titled as ‘**Ambika Kaul vs. Central Board of Secondary Education and others**’ was extensively relied upon.

7. In appeal preferred by the plaintiff, the findings have been affirmed by the Lower Appellate Court again relying upon ratio of law laid down in **Ambika Kaul’s case** (supra).

8. Counsel for the appellant-plaintiff while assailing the impugned judgment and decree passed by the Courts below submits that the Courts below erred in misreading the ratio of law laid down in



Ambika Kaul's case. Rather the same supports the cause of the plaintiff. Counsel for the plaintiff submits that till the plaintiff attained age of majority, he was under legal handicap from approaching the Court to claim correction of the date of birth. After he attained majority, suit was filed seeking correction of the date of birth. Thus, no fault can be found against the plaintiff and even if it is assumed that his father filled the form, the same cannot be taken as acquiescence/estoppel qua the plaintiff.

9. *Per contra*, counsel for respondent No.1 submits that once the parents of the plaintiff themselves filled the application form declaring the date of birth of the plaintiff to be 20.07.1997, he is estopped from maintaining the suit. Reliance is being placed upon para 20 of the judgment of **Ambika Kaul's** case (*supra*).

10. I have heard counsel for the parties and have carefully gone through the records of the case.

11. Facts are not much in dispute. It is not in dispute that so far as the admission form of the plaintiff is concerned, his date of birth declared as 20.07.1997. He seeks correction of the date of birth on the basis of certificate issued by Registrar, Birth and Death, Sirsa wherein his date of birth has been recorded as 13.08.1998. The suit was filed on 06.10.2016. Thus, the issue that falls for consideration of this Court is:

(i) *Whether the plaintiff is estopped from seeking correction of date of birth or not?*

12. Both the counsels have relied upon ratio of law laid down in **Ambika Kaul's** (*supra*). In the considered opinion of this Court, the issue has been dealt by Division Bench of this Court in **Ambika Kaul's**



case. However, both the Court below erred in misreading the ratio. While explaining the import of Registration of Births and Deaths Act 1969, Division Bench observed as under:-

“20. The relevance of the entries in the Municipal or Panchayat records has undergone a complete sea change with the enactment of the Registration of Births and Deaths Act, 1969. As per Section 8 of the said Act, the birth is required to be reported to the Registering Officer in all conceivable situations. The reporting of birth, if not made within the prescribed period, is permitted after payment of fine again for delay in reporting. The failure to report birth incurs the risk of prosecution and the penalties. Thus, such provision of recording of date of birth with the Registrar of Births and Deaths is mandatory.

20-A. Therefore, we find that the issue is required to be examined in respect of the persons born prior to the commencement of the Act i.e. when recording of date of birth was not a statutory requirement and the persons born after the enactment of such Act, when it was a mandatory condition of recording the date of birth.”

13. In subsequent paras, Division Bench examined bunch of the cases categorizing them vis-a-vis a persons born prior to the commencement of the Act when recording of date of birth was not statutory and the persons born after enactment i.e. when recording of date of birth was made mandatory. The present case falls within the latter category. This category has been further sub-categorized vis-a-vis date of filing of the suit i.e. prior to expiry of 03 years from attaining the majority and the suits filed 03 years after attaining the majority. The objective behind sub-classification is to see whether the plaintiff has attained any benefit on account of incorrect date of birth that he seeks to get corrected. Reliance can be made to para 47 and 48 of the judgment

which reads as under:-



“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.

LPA No. 373 of 2015 (Shubham Attri v. CBSE and others).

48. In this case, the School records mention 12.6.1996 as appellant's date of birth, whereas the date of birth as per the birth certificate is 12.6.1995. The writ petition was filed in the year 2014 i.e. within three years of attaining majority on the basis of the actual date of birth. The Rules of the Central Board for Secondary Education, do not permit any change of date of birth, except in the case of clerical or arithmetical mistake that too on the basis of entries in the admission form. Though, the appellant should have been directed to approach the Civil Court, yet since he has approached this Court without taking an advantage of matriculation certificate for any purpose and seeks correction in the date of birth for the purpose of obtaining passport, we deem it appropriate to direct the respondent-Board to alter his date of birth to be the same as in the birth certificate issued by the Registrar, Births and Deaths. The appeal stands disposed of accordingly.”

The principle propounded by Division Bench has its genesis in doctrine of election.

14. Counsel for respondent No.1 is not in a position to dispute that even if the date of birth of the plaintiff is taken to be 20.07.1997, still the suit filed by the plaintiff is within the 03 years of attaining the majority.



15. In view thereof, this Court finds that the case of the plaintiff would be covered by the ratio of law laid down in para 47 *ibid*.

16. Resultantly, the present appeal is allowed. Judgments and decrees dated 22.02.2017 and 24.07.2017 passed by the Courts below are hereby set aside.

(PANKAJ JAIN)
JUDGE

19.09.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No