



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

Sr. No.208

CWP-20494-2018 (O&M)

Date of decision : 7.1.2020

Ropin Hastir @ Robin Sharma

..... Petitioner

VERSUS

Central Board of Secondary Education (CBSE) and Others Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Ms. P.K. Sekhon, Advocate, for the petitioner.

Mr. B.S. Seemar, Advocate, for respondents No.1 and 2.

SUDHIR MITTAL, J. (Oral)

The petitioner is a student. His date of birth has been wrongly recorded in the Secondary School Leaving Certificate i.e. Class X and thus, he has filed the present writ petition.

The petitioner studied till Class IX in Police DAV Public School, Police Lines, Amritsar (respondent No.3). In the year 2011, he transferred to Shaheed Darshan Singh Pheruman Public School (respondent No.4). A Transfer Certificate dated 4.4.2011, was issued by respondent No.3 in which the date of birth was mentioned as '22.07.1996.' The same date of birth was reflected in the Secondary School Examination Certificate, a copy of which is Annexure P6 on the record. A representation was made to the Central Board of Secondary Education (CBSE) through respondent No.4, but the same was rejected vide letter dated 13.5.2014, on the ground that the school record does not support the desired correction. Consequently, the petitioner approached this Court through CWP-20834-2014, but the same was dismissed vide order dated 7.10.2014 by observing that only genuine clerical errors can be corrected under Rule 69.2 of CBSE Examination Rules (for short 'the Rules'). It has further been observed that if there is a mistake in the record of the school and the date of birth has been mentioned in the certificate in accordance with school record, no correction can be permitted.

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After dismissal of the aforementioned writ petition, the petitioner filed a civil suit in the Court of Civil Judge (Junior Division) Baba Bakala. The said suit was filed in January 2015. On receipt of written statement, an application dated 12.10.2015, was filed for withdrawal thereof with liberty to file a fresh one on the same cause of action. It is mentioned in the application that proper parties had not been impleaded and that certain facts have not been mentioned in the plaint necessitating the filing of the application. I have been told that civil Court permitted the withdrawal of the suit.

Thereafter, the petitioner approached respondent No.3, who issued a fresh Transfer Certificate dated 30.5.2013, recording the correct date of birth as '25.7.1996.' Based thereupon and the birth certificate issued by the Registrar (Births and Deaths), Passport, PAN Card, Aadhar Card etc., respondent No.4 requested the CBSE to correct the date of birth vide communication dated 21.5.2018. A similar communication dated 18.7.2018, was forwarded by respondent No.3. However, the requests have been rejected vide letter dated 25.7.2018 on the same ground as earlier i.e. the school record does not support the desired correction.

Learned counsel for the petitioner has argued that the complete record of the petitioner supports the contention of the petitioner that his date of birth is 25.7.1996. This is apparent from Birth Certificate dated 17.8.1996 (Annexure P-1), School Registration Form submitted in the academic session 2001-02 (Annexure P-3), Registration Certificate for the academic session 2010-11 issued by respondent No.3 (Annexure P-4) when the petitioner was in Class IX as well as documents like Passport and PAN Card etc. Rule 69.3 of the Rules permits correction of date of birth if the same has been wrongly recorded either due to typographical error or other error to make it consistent

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with the school record and also by Court orders. Thus, the date of birth of the petitioner deserves to be corrected.

Learned counsel for CBSE submits that according to Rule 69.3 only a clerical typographical error can be corrected and none else. The date of birth in the Secondary School Leaving Certificate has been recorded on the basis of the record of respondent No.4 and thus, it cannot be stated that there is any clerical or typographical error. Moreover, the writ petition is barred by principle of res judicata and Order 23 Rule 1 CPC. It is also barred by delay and laches as the same has been filed more than three years after the petitioner attained the age of majority. He relies upon a Division Bench judgment in ‘Ambika Kaul Vs. Central Board of Secondary Education and Others, 2015 (2) RSJ 606’ and prays for dismissal of the writ petition.

The first question to be decided is whether the case of the petitioner falls within Rule 69.3 of the Rules. The said Rule prescribes that correction can be ordered in case the error has occurred either due to a typographical mistake or other reasons and is supported by school record. It has not been denied by the respondent-CBSE that the birth certificate issued by the Registrar (Births and Deaths) dated 17.8.1996, records the date of birth of the petitioner as ‘25.7.1996.’ The School Registration Form (Annexure P-3) and Registration Certificate of Class IX (Annexure P-4) have also not been denied. The issuance of fresh Transfer Certificate dated 30.5.2018, has also not been controverted. The receipt of communication dated 31.5.2018 and 18.7.2018 has also not been denied. Thus, it is apparent that the error crept in when the Transfer Certificate dated 4.4.2011 (Annexure P-7) was issued by respondent No.3. This error has been admitted by respondent No.3 by issuance of Transfer Certificate dated 30.5.2018. Thus, the record of the school supports the contention of the petitioner that his date of birth has been wrongly

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recorded in the Secondary School Leaving Certificate. Accordingly, the case of the petitioner is covered by Rule 69.3 of the Rules.

The next question is whether the order/judgment dated 7.10.2014 passed in CWP-20834-2014 operates as res judicata. At the time of decision of that writ petition, reliance was placed upon Rule 69.2 which permitted correction of date of birth only in case, there was a clerical error. There was nothing on record in that writ petition to show that the school record supported the case of the petitioner and that the error was on account of issuance of transfer certificate which recorded the date of birth of the petitioner wrongly. Thus, although, the issue involved in that writ petition was the correction of date of birth, material particulars which are available on the record in this case, were absent from the record of the earlier writ petition. Consequently, it cannot be held that order/judgment dated 7.10.2014 operates as res judicata in the instant case. Moreover, the rule of res judicata is a rule of procedure and it is settled law that rules of procedure are handmaids of justice. The interest of justice requires that the date of birth of the petitioner be corrected as there is sufficient evidence available on record in support of the case of the petitioner.

Finally, the question to be decided is whether Order 23 Rule 1 CPC would bar this writ petition. I have read the application for withdrawal of suit, a copy of which was handed over in Court. The prayer therein is for withdrawal with liberty to file a fresh suit. Admittedly, the suit was permitted to be withdrawn and whether liberty was or was not granted is immaterial. Once an application for withdrawal is filed seeking liberty to file a fresh suit, on grant of permission of withdrawal, the liberty has to be presumed in law, whether specifically granted or not. This is because such an application has either to be allowed fully or rejected. Relief cannot be split as has been held in 'M/s S.R. Engineering Vs. Union of India, 2019 (5) RCR (Civil) 910.'



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The Division Bench judgment in Ambika Kaul (supra) does not advance the case of the respondents. The said judgment invokes the principle of estoppel to deny relief to the writ petitioners who were claiming change of date of birth on the basis of birth certificate, although, the CBSE certificate recorded a different date of birth. The writ petitioners were claiming the change before superannuation and thus, it was held that the birth certificate should have been relied upon when admission was taken in school. The question of delay does not arise as the petitioner has been pursuing his remedies since the year 2012-13 as is evident from Annexure P-8. The writ petition is accordingly, allowed. Respondents No.1 and 2 are directed to correct the date of birth of the petitioner in his Secondary School Certificate. The necessary exercise be carried out within a period of four weeks of receipt of certified copy of this order.

(SUDHIR MITTAL)
JUDGE

7.1.2020
Ramandeep Singh

Whether speaking / reasoned	Yes / No
Whether Reportable	Yes/ No