

M.M.DAS, J.

W.P.(C) NO.17037 OF 2010 (Decided on 24.02.2011)

GAYATRI KAR

..... Petitioner.

. Vrs.

**BOARD OF SECONDARY EDUCATION
ORISSA & ORS.**

.....Opp.Parties.

CONSTITUTION OF INDIA, 1950 – ART.226.

For Petitioner - M/s. K.K.Swain, P.N.Mohanty,
P.K.Mohanty & R.P.Das.

For Opp.Parties - M/s. P.K.Mohanty, D.N.Mohapatra, J.Mohanty,
P.K.Nayak & S.N.Dash
(For O.Ps. 1 and 2)

M.M.DAS, J. This writ application has been filed seeking correction of the name of father of the petitioner in her certificate granted by the Board of Secondary Education on passing the HSC Examination in the year 1993.

2. Mr. Swain, learned counsel submits that the name of the father of the petitioner was wrongly mentioned in the said certificate as “Rabindra Nath Kar” instead of “Premananda Kar”. He further submits that an application was made to the District Inspector of Schools, Cuttack to correct the primary school certificate in respect of the father’s name of the petitioner, which was referred to the concerned Tahasildar, who made an enquiry through the R.I.and found that the father’s name of the petitioner is “Premananda Kar” and not “Rabindra Nath Kar” as mentioned in the said certificate. As such, change of name was certified and countersigned by the District Inspector of Schools and, accordingly, the name of the father of the petitioner was corrected in the Admission Register of the Primary School as well as in the High School. Thereupon, the petitioner made an application to the Board of Secondary Education to correct the name of the father of the petitioner. The petitioner states that the application was accompanied by the affidavit sworn to by Sri Rabindra Nath Kar as well as the affidavit sworn to by the petitioner asserting that Premananda Kar is her father. But, the Board authorities though assured the petitioner to make necessary correction in her High School Certificate by changing her father’s name, nothing has been done as yet.

3. Mr. P.K. Mohanty, learned counsel appearing for the Board vehemently urges that the writ petition suffers from laches, as the petitioner has approached this Court after more than thirteen years and the writ petition is liable to be dismissed in limine on that ground, as no explanation for the delay has been given by the petitioner. He further submits that the Regulations of the Board do not permit correction of the father’s name in the Certificate granted by the Board to a candidate after passing the HSC Examination. It is true that the Regulations of the Board have a provision that a candidate may make an application to correct any error with regard to the candidate’s name or surname or any clerical error appearing in the certificate, but the Regulation is

silent with regard to any provision for correction of the name of the parents of the candidate.

4. The facts of the case, however, reveal that the husband of the petitioner expired in a motor vehicle accident, who was serving as a Clerk in the office of the Accountant General, Orissa, Bhubaneswar and upon an application being made by the father of the petitioner under the Rehabilitation Scheme, the petitioner has been absorbed as a Clerk on probation in the office of the Principal Accountant General (A&E), Orissa, Bhubaneswar pursuant to the appointment letter dated 31.12.2010 as at Annexure-10. But a condition has been imposed in the said appointment letter that the appointment of the petitioner is purely provisional and subject to submission of corrected HSC Certificate within a period of two months, failing which, her appointment is liable to be terminated without assigning any reason.

5. The question as to whether Premananda Kar is the father of the petitioner is a question of fact, which can not be adjudicated in a writ petition. No doubt, even in a writ application, where materials are provided and admitted by the parties with regard to a question of fact, the writ Court has jurisdiction to accept such material as true, but in the instant case, where a question of status of the petitioner, i.e. whether the petitioner is the daughter of Premananda Kar or not, in view of the fact that her father's name has been mentioned as "Rabindra Nath Kar" in the Matriculation Certificate, can not be adjudicated upon under Article 226 of the Constitution.

6. It is, therefore, imperative on the part of the petitioner to approach the Common Law Forum by filing a properly constituted suit for declaration that she is the daughter of "Premananda Kar" and not "Rabindra Nath Kar", as mentioned in the High School Certificate granted by the Board. However, considering the facts of the case, as stated above, it is found that in the event a corrected certificate is not provided to the employer by the petitioner, there is every chance of her losing the service and thereby the petitioner, who has become a widow, will be forced to be a destitute on account of the cruel hands of fate. It is a well settled position of law that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice and further that the jurisdiction of the High Court under Article 226 of the Constitution is extraordinary, which is normally exercisable keeping in mind the principles of equity. At this juncture, it would be profitable to refer to the decision in the case of Collector, Land Acquisition, Anantanag and another v. Mst. Katiji and others, AIR 1987 SC 1353 in the context of this case. In the said case, the Supreme Court was considering the question of condoning delay under section 5 of the Limitation Act in an appeal preferred by the State of Jammu and Kashmir arising out of a decision enhancing compensation in respect of acquisition of lands for a public purpose. While considering the said question and laying down that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice will be defeated, the Supreme Court observed that it must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. It also laid down that when substantial justice and technical considerations are pitted against each other cause of substantial justice deserves to be preferred. This Court, therefore, is of the view that while simultaneously granting opportunity to the petitioner to seek a declaration in a properly constituted suit, as stated above, should pass appropriate orders to give

protection to the petitioner from losing her service for non-submission of a corrected High School Certificate, as directed by her employer under Annexure-10.

7. Considering the above aspect, liberty is granted to the petitioner to file a civil suit in accordance with law for declaration that she is the daughter of "Premananda Kar" and not "Rabindra Nath Kar", as mentioned in the High School Certificate granted by the Board within a period of three months from today. If such a suit is filed and the number of the suit is provided to the employer of the petitioner, the service of the petitioner shall not be terminated on the ground that she has not submitted the corrected High School Certificate till disposal of the suit. In the event, the suit is decreed, basing on such judgment of the civil court, which would amount to a judgment in rem, the Board shall correct the name of the father of the petitioner in the High School Certificate granted to her, which shall be produced before the employer and accepted.

8. The writ petition is accordingly disposed of.

Writ petition disposed of.