

IN THE HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR

Reserved on:23.12.2020  
Pronounced on:31.12.2020

WP(C) No.3628/2019  
CM No.7448/2019

Mohammad Amin Bhat ...Petitioner(s)

Through: - Mr. M. Ashraf Wani, Advocate.

Vs.

J&K Board of School Education & Ors. ...Respondent(s)

Through: - Mr. M. I. Dar, Advocate,

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

JUDGMENT

1) The short grievance projected by the petitioner in this petition is that his actual date of birth reflected in the school records is 28<sup>th</sup> of March, 1963 but due to clerical error, has been carried as 5<sup>th</sup> of April, 1961 in the qualification certificates issued by the J&K Board of School Education, the respondent No.1. He claims that he moved a formal application for correction of his date of birth from 5<sup>th</sup> of April, 1961 to 28<sup>th</sup> of March, 1963 in the year 2009 and a Correction Committee constituted by the respondents considered his case in a meeting held on 29<sup>th</sup> of September, 2009, and rejected the same on the ground that no variation was found between the school and Board records. This was conveyed to the petitioner by the Assistant Secretary of the Board vide his No.F1415(Certs-corr-1)B/2009/Item No.15/IV dated 25.10.2009.

2) It is claimed that subsequent to the rejection of his case in the year 2009, the petitioner got information that the stand taken by the Board while rejecting his case was factually incorrect and contrary to record. The petitioner claims that he once again approached the respondents but was told to apply afresh on the prescribed format. Accordingly, the petitioner submitted fresh application on the prescribed format on 26<sup>th</sup> of August, 2015. While the application of the petitioner was under consideration, the petitioner in response to an application moved under Right to Information Act got further information from the Board which substantiated the plea of the petitioner that his recorded date of birth forwarded by the school authorities to the Board was 28<sup>th</sup> of March, 1963.

3) It appears that feeling aggrieved of the inaction on the part of Board authorities to accord consideration to his case, the petitioner filed OWP No.356/2016. The writ petition was disposed of by the Court vide its order dated 15<sup>th</sup> of March, 2016, at its threshold and without issuing formal notice to the respondents. The respondent Board was directed to accord consideration to the claim of the petitioner for rectification of error in date of birth certificate issued by the Board to the petitioner keeping in view the recorded position in terms of school records. Four weeks time was granted to the Board authorities to do the needful. In compliance, the Board considered the case of the petitioner afresh and vide communication No.F-1415(CC-Corr-Certs-03MC)B/16 dated 06.05.2016, impugned in this petition, once again rejected the case of the petitioner on the ground that same did not fall within the purview of

rules and regulations governing the correction of date of birth. It is this communication of the respondent Board which is called in question by the petitioner in this petition. Petitioner also seeks a Mandamus to the Board authorities to effect correction of date of birth from 5<sup>th</sup> April, 1961 to 28<sup>th</sup> of March, 1963 and issue a fresh date of birth certificate.

4) Respondents represented by Mr. M. I. Dar, resists the petition by placing strong reliance on Regulation No.17 of the J&K Board of School Regulations, 1992 [“the Regulations”]. Counsel for the respondents submits that the claim put forth by the petitioner for correction of his date of birth which was recorded in the Board records in the year 1980, is highly belated and barred by limitation and, therefore, not covered by the Regulations.

5) Having heard learned counsel for the parties and perused the record, it is necessary to first set out Regulation No.17 of the Regulations, which lays down elaborate procedure for correction of date of birth:

“17.(i) Ordinarily no correction in the date of birth of any candidate registered with the Board for any examination shall be made in the records of the Board provided an application with required fee for correction in date of birth may be considered by the Board or the committee nominated by it for the purpose:-

- (a) where it is claimed that there has been a genuine clerical error in transcribing the age of the applicant from the Admission Register of the recognized school through which he/she has appeared in the Secondary School Examination of the Board to the Application form for his/her admission to the said examination:
- (b) where it is claimed by a candidate that his/her date of birth as entered in the records of the recognized institution, sending up candidate for the Secondary School Examination, is not his/her correct date of birth and that the correct entry as claimed by the candidate be allowed to be made in his/her examination admission form to be sent up to the Board. For

this purpose the records of the Primary and Middle Department of the School/s from where the candidate was reading, shall be examined and if the claim of the candidate is found correct, the case regarding correction in the date of birth shall be placed before the Chairman, accompanied by an Affidavit filed by the Head of the Institution of the Middle Department or the Middle/Primary School to the effect that the entry of date of birth made in the school leaving or Discharge Certificate issued by the Middle Department or Middle/Primary School is not a true copy of the entry existing in the Admission and withdrawal Register of the School, in which correct record of the date of birth exists which is so and so (mention the correct entry here) and the entry of date of birth (viz-----) in the Discharge or school leaving Certificate was made inadvertently and not deliberately.

Such cases shall not, however, be opened if time barred except with the permission of the Chairman, whenever he is satisfied that the candidate could not apply in time for reasons beyond his/her control.

(c) that the application is made on the prescribed form within one year from the date of issue of Secondary School Examination Certificate from the School, or in the case of private candidates only from the Board office to the applicant, and is accompanied by the prescribed fee which shall not be refundable; and

(d) that the application is submitted through the Headmaster/headmistress/Principal concerned who shall, in support of the application furnish the relevant register of the school along with his/her own Affidavit attesting the statement of the applicant.

(ii) If on examination of the evidence presented in support of the applicant, it is established to the satisfaction of the Chairman that the mistake in date of birth has occurred due to clerical/ transcriptional / typographical/computing error he may in his discretion authorize the necessary correction in the entry of the date of birth of the applicant in the Board records.

(iii) All applications for correction in date of birth by students who cannot produce record of the first entry of date of Birth shall be considered by the Board or the committee appointed by it on their merits.

Explanation: The following shall be deemed to be clerical, transcriptional and typographical error:-

- i) Any error that may have occurred in the school record while transcribing the particulars of any candidate from primary to middle department or from middle to high department and or from school concerned to the Board.
- ii) Any error in the spellings of a name which is apparent on the face of record.

- iii) Any error that has occurred on account of transcribing particulars from the registration returns received from the institution to the record of the Board.”

6) From a careful perusal of Regulation No.17 in its entirety, it becomes evident that ordinarily no correction in the date of birth of any candidate registered with the Board for any examination is permissible to be made in the records of the Board. This, however, is subject to an exception i.e. when an application with required fee for correction of date of birth is made claiming, inter alia, that there has been a genuine clerical error in transcribing age of the applicant from the admission register of the recognized school through which such candidate has appeared in the Secondary School Examination of the Board to the application form for his or her admission to the said examination, in such situation a Committee constituted by the Board may consider the application provided the application is made within one year from the date of issue of Secondary School examination certificate.

7) It is true that Chairman of the Board is empowered to condone the delay if he is satisfied that the candidate could not apply in time for the reasons beyond his/her control. With a view to regulate this discretion vested in the Chairman, the Board has issued notification No.F(Acad-C)Corr/B/09 dated 16<sup>th</sup> of February, 2009 and has provided that in the case of genuine and extraordinary nature, the application may be entertained for consideration of necessary correction under rules beyond limitation period of **one year up to three years** from the date of issuance of Diploma/Qualification certificate. In the aforesaid notification it is

also made emphatic that any application submitted and received after three years shall not be entertained/considered under any circumstances.

8) It is important to note here that neither Regulation No.17 nor the aforesaid notification has been challenged by the petitioner in this petition. It is also important to note that Regulation No.17, by way of an explanation, has also defined what is 'clerical, transcriptional and typographical error'. Clause (iii) of the explanation is pertinent and is reproduced here-under:

“(iii) Any error that has occurred on account of transcribing particulars from the registration returns received from the institution to the record of the Board.”

9) Viewed thus, it is beyond any pale of doubt that an application for correction of date of birth in terms of Regulation No.17 is required to be made within one year from the date of issue of Secondary School Examination certificate and in view of the notification issued in the year 2009, it can be entertained beyond one year but up to three years in the case which is of genuine and extraordinary nature but no application can be entertained after the expiry of three years period from the date of issuance of Secondary School Examination certificate under any circumstances. In the instant case, the Secondary School Examination certificate in favour of the petitioner was, admittedly, issued in the year 1980 and the first application was moved by the petitioner for seeking correction of date of birth in the year 2009 i.e. after a period of 29 years. The claim, howsoever genuine it might be, was highly belated and the Board rightly refused to entertain the same. The petitioner became aware

of the error, if any, in his date of birth in 1980 itself and, therefore, had no reason or occasion to wait for 29 years to move an application in this regard before the Board authorities.

10) The Hon'ble Supreme Court in the case of **Board Of Secondary Education Of Assam vs. Md. Sarifuz Zaman And Ors, 2003 Supp(6) SCR 1273**, while dealing with an identical fact situation and referring to Regulation No.8 of Board of Secondary Education, Assam Regulations, held thus:

“Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to latches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone. There ought to be a limit of time by which human affairs stand settled and uncertainty is lost. Regulation 8 confers a right on the applicant and a power coupled with an obligation on the Board to make correction in the date of birth subject to the ground of wrong calculation or clerical error being made out. A reasonable procedure has been prescribed for processing the application through Inspector of Schools who would verify the school records and submit report to the Board so as to exclude from consideration the claims other than those permissible within the framework of Regulation 8. Power to pass order for correction is vested on a higher functionary like Secretary of the Board. An inaccuracy creeping in at the stage of writing the certificates only, though all other prior documents are correct in all respects, is capable of being corrected within a period of three years from the date of issuance of certificate. Three years period provided by the Regulation is a very reasonable period. On the very date of issuance of the certificate the concerned student is put to notice as to the entries made in the certificate. Everyone remembers his age and date of birth. The student would realize within no time that the date of birth as entered in the certificate is not correct if that be so once the certificate is placed in

his hands. Based on the certificate the applicant would seek admission elsewhere in an educational institution or might seek a job or career where he will have to mention his age and date of birth. Even if he failed to notice the error on the date of issuance of the certificate, he would come to know the same shortly thereafter. Thus, the period of three years, as prescribed by Regulation 3, is quite reasonable. It is not something like prescribing a period of limitation for filing a suit. The prescription of three years is laying down of a dividing line before which the power of the Board to make correction ought to be invoked and beyond which it may not be invoked. Belated applications, if allowed to be received, may open a Pandora's box. Records may not be available and evidence may have been lost. Such evidence—even convenient evidence—may be brought into existence as may defy scrutiny. The prescription of three years bar takes care of all such situations. The provision is neither illegal nor beyond the purview of Section 24 of the Act and also cannot be called arbitrary or unreasonable. The applicants seeking rectification within a period of three years form a class by themselves and such prescription has a reasonable nexus with the purpose sought to be achieved. No fault can be found therewith on the anvil of Article 14 of the Constitution.”

11) The aforesaid judgment of the Hon'ble Supreme Court applies on all fours to the case on hand and, therefore, clinches the issue raised by the learned counsel for the petitioner for consideration in this petition.

12) In the face of aforesaid judgment which has been rendered by the Supreme Court in the context of identical facts, I see no point in referring to the judgments relied upon by the learned counsel for the parties.

13) Mr. M. Ashraf Wani, learned counsel for the petitioner, places reliance on the following judgments:

(1) **Bharat Coking Coal Ltd. vs. Chhota Birsa Uranw,**  
**(2014) 12 SCC 570;**



- (2) Lateef Ahmad & anr. vs. State & Ors,  
2014 (1) JKJ 431 [HC];
- (3) Furqan Ishrat Dar vs. Central Board of Secondary  
Education & anr, passed in OWP No.150/2019 on  
15<sup>th</sup> of February, 2019;
- (4) Chief Executive Officer vs. Asiatic Steel Industries  
Ltd., 2020 SCC Online SC 949;

The following judgments were relied upon by Mr. M. I. Dar,  
learned counsel for the respondents:

- (1) S. Mohan Singh Sethi vs. State Board of School  
Education, J&K & Ors., 2011(2) JKJ[HC] 809HC;
- (2) State of M.P and Ors. v. Premal Shrivastava,  
AIR 2011 SC 3418;

14) The judgment of the Supreme Court in the case of **Bharat Coking Coal Ltd.** (supra) is actually predicated on the legal proposition laid down in the case of **Secretary and Commissioner, Home Department vs. R. Kirubakaran**, 1994 Supp. (1) SCC 155, wherein the Hon'ble Supreme Court has held that "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." It further provides that "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.”

15) In the cases of **Lateef Ahmad** and. **Furqan Ishrat Dar**, the issue that directly fell for consideration before this Court was with regard to correction of caste/surname and not with regard to correction of date of date of birth. Both the judgments aforesaid have been rendered in their peculiar facts and circumstances and, therefore, cannot be taken benefit of by the petitioner herein in the given facts and circumstances of the case on hand.

16) The judgment in the case of **Chief Executive Officer vs. Asiatic Steel Industries Ltd.**(supra) also does not deal with the issue and is, therefore, of no help to the petitioner.

17) To be fair to Mr. M. I. Dar, learned counsel for the respondents, the judgment rendered by a Single Bench of this Court in the case of **S. Mohan Singh Sethi**{2011 (2) JKJ[HC] 89} and the judgment of the Hon'ble Supreme Court in the case of **State of M.P. and Ors. v. Premlal Shrivastava** (AIR 2011 SC 3418), support the plea of the respondents that stale claims for correction of entries in the date of birth or the official records are not to be entertained.

18) A great stress was laid by Mr. Wani on the information which the petitioner received in response to his application under Right to Information Act to urge that the mistake in recording the date of birth had been committed by the Board while transcribing the same from the

school records to the Secondary School Examination certificate issued in his favour.

19) I have considered the issue raised by the learned counsel for the petitioner on the conspectus of totality of the facts and circumstances obtaining in the case and I am of the view that the decision of the respondent Board is not flawed in any manner. Accordingly, I find no merit in this petition and the same is dismissed along with connected CM(s).

(Sanjeev Kumar)  
Judge

Srinagar  
31.12.2020  
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No  
Whether the order is reportable: Yes/No

