

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

W P No. 17810 / 2017

NISHAB BANO QURESHI VS. STATE OF MP & ORS.,

--- 1 ---

INDORE, Dated : 23/03/2018

Mr. Nitin Bhati, learned counsel for the petitioner.

Ms. Chitrlekha Hardia, learned counsel for the respondent No.2- Board of Secondary Education.

Heard.

The petitioner before this Court has filed this present writ petition seeking correction of date of birth in the mark sheet issued in the year 2003 by the Board of Secondary Education, Madhya Pradesh, Bhopal.

2. The contention of the petitioner is that her date of birth in the birth certificate is 6/4/1989 and as per the School register maintained by Islamia Karimia Higher Secondary School, Sanyogitaganj, Indore, again her date of birth is 6/4/1989, however, in the examination conducted by the Board of Secondary Education, MP, Bhopal, in the year 2003, her date of birth is reflected as 6/4/1986 and, therefore, the same deserves to be corrected. It has been stated that mistake, if any, committed by the Board deserves to be corrected.

3. On the other hand, learned counsel for the respondent Board has argued before this Court that the petitioner in respect of a certificate issued in the year 2003, has approached this court only in the year 2017 and no such correction can be done in the light of the statutory provision, as contained under the Madhya Pradesh Date of Birth (Entries in the School Register) Rules, 1973 and the

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

W P No. 17810 / 2017

NISHAB BANO QURESHI VS. STATE OF MP & ORS.,

--- 2 ---

instructions dated 14/1/2015 issued on the subject by the Central Board of Secondary Education. Reliance has also been placed upon the judgment delivered by this Court in the case of Rajbali Singh Vs. Board of Secondary Education, Bhopal reported in [2001 (3) MPLJ 276] as well as the judgment delivered by the Hon'ble Supreme Court of India in the case of Board of Secondary Education of Assam Vs. MD. Sarifuz Zaman and others reported in (2003) 12 SCC 408.

4. This Court has carefully gone through the documents filed by the petitioner. The petitioner has filed duplicate copy of birth certificate and it is true that the date of birth as reflected in the birth certificate is 6/4/1989. In the Certificate issued by the School also her date of birth is reflected as 6/4/1989, however, in the examination conducted by the Board, her date of birth is reflected as 6/4/1986. The Board of Secondary Education has disputed the date of birth.

5. Rule 9 of the Madhya Pradesh Date of Birth (Entries in the School Register) Rules, 1973, reads as under :

9. Restriction on entertaining the application for correction in date of birth. - No application for correction in date of birth recorded in school records shall be entertained under rules 7 and 8 after the form for the Board's examination at the end of secondary level of education has been sent to the Board or after the student has left the school, if the student has not pursued education upto the end of secondary standard.

6. Not only this, as per the instructions issued by the Board of Secondary Education governing the field, the date

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

W P No. 17810 / 2017

NISHAB BANO QURESHI VS. STATE OF MP & ORS.,

--- 3 ---

of birth cannot be corrected beyond a period of three years. In the present case, the correction is being sought after a lapse of more than a decade.

7. This Court in the case of Rajbali Singh (supra) in paragraphs 7 to 9 has held as under :

7. On a bare reading of the aforesaid rules it is absolutely clear that certain stages are provided for correction or change in the date of birth. Rule 9 makes it categorically clear that no application in regard to date of birth shall be entertained either under Rule 7 or 8 after the form for the Board's examination at the end of secondary level of education has been sent to the Board or after the student has left the school, if the student has not pursued education upto the end of secondary standard. Thus, the school authorities have no power to rectify the mistake after the forms are sent to the Board. On a perusal of the Rules it is graphically clear that there is no provision for correction of date of birth by the Board. In absence of any provision in the Rules the Board is entitled under law to provide guidelines for correction of date of birth. The Board has framed guidelines which have been brought on record as Annexure P-2. The said guidelines provide that on compliance of certain formalities there can be rectification of the date of birth. It has been laid down therein that the prayer for rectification or correction of date of birth would not be accepted after three years. Submission of Mr. Jain, learned senior counsel is that in absence of any limitation in the Rules the Board could not have provided a period of limitation in the guidelines. In my considered opinion as the Rules do not deal with the period of limitation the Board has the authority to stipulate a time limit for correction of the date of birth and I do not perceive any error in such a provision.

8. The next submission of Mr. Jain is that the petitioner after coming to know about the error made a representation to the Board in quite promptitude and there is no delay and therefore, he cannot be deprived of the benefit on the ground of delay and laches. Learned counsel has drawn the inspiration from the decision

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

W P No. 17810 / 2017

NISHAB BANO QURESHI VS. STATE OF MP & ORS.,

--- 4 ---

rendered in the case of S.C. Verma (supra). In the aforesaid case the Division Bench has dealt with the correction of date of birth relating to a Central Government employee and has interpreted the provisions under Rule 56 of the Fundamental Rules. The Division Bench to reach its conclusions has placed reliance on the decision rendered in the case of [Union of India v. Harnam Singh](#), AIR 1993 SC 1367. The learned Chief Justice speaking for the Court has come to hold that as there was discrimination in view of the law laid down in the case of Harnam Singh (supra) the order passed by the Central Administrative Tribunal was susceptible and required to be interfered with. In my considered opinion the factual matrix of the aforesaid case is quite different from the present one. In the case at hand, the Board has its own guidelines and the petitioner has approached the Board after three and a half decades. The enormous delay clearly establishes that the fault on the part of the petitioner is colossus. It is well settled in law that a litigant who is not vigilant, is not entitled to any relief. At this juncture, I think it apposite to refer to a passage from Harnam Singh (supra) wherein their Lordships expressed thus :-

".... A Government servant who has declared his age at the initial stage of 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 to 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

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

W P No. 17810 / 2017

NISHAB BANO QURESHI VS. STATE OF MP & ORS.,

--- 5 ---

recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour 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."

(emphasis supplied) From the aforesaid pronouncement of law, it is quite vivid that unless the requisite application is submitted within the prescribed period the litigant has to suffer on the ground of delay and laches. In this context, I may profitably refer to the order passed in Santosh Kumar Shukla (supra) wherein C.K. Prasad, J. has held as under :--

"In any view of the matter, petitioner has asked for correction of his date of birth by filing an application after 19 years of the issuance of the certificate, on this ground alone, I am of the opinion that the petitioner is not entitled for the relief prayed for in the writ petition."

Thus the lis buried in the coffin, cannot rise like a phoenix.

9. Mr. V.K. Shukla, learned counsel for the Board has also drawn the attention of this Court to the Note appended in the Annexure P-4, which reads as under :-

"In case of any discrepancy this mark-sheet should be returned immediately to the Secretary pointing out the error in a separate forwarding memo."

There is nothing on record to point out that the school authorities brought it to the notice of the Board that the date of birth of the petitioner was erroneously mentioned in the marksheet. Even if the stand of the petitioner is accepted the school authorities could not have changed the date of birth of the petitioner as the same was within the domain of the Board even before the 1973 Rules came into force. Thus, submission of Mr. Jain that when the school authorities had corrected the date of birth of the petitioner, it was incumbent on the Board to carry out the rectification, does not merit consideration.

8. In the aforesaid case it has been held that unless and until the application is submitted within the prescribed period for correction in respect of date of birth, the same cannot be entertained.

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

W P No. 17810 / 2017

NISHAB BANO QURESHI VS. STATE OF MP & ORS.,

--- 6 ---

9. In the case of Md. Sarifuz Zaman (supra), a similar view has been taken by the apex Court. The apex Court in paragraphs 9 to 12 has held as under :

9. Undoubtedly, the general power conferred on the Board by Section 24(1) of the Act is for the purpose of carrying out the provisions of the Act. Under Section 24(2), clause (d) provides the subject, on which Regulations may be framed, as conducting examinations and publishing the results. Clause (g) provides the subject as 'conditions under which candidates shall be admitted to the examinations of the Board. It is not disputed, and could not have been, that the application form of a candidate seeking to participate in an examination held by the Board has to be forwarded by the educational institution wherein he is studying. The application has to be duly, truly and fully filled in. One of the informations required to be given is the age and date of birth of the students. It is common knowledge that the certificate issued by the Board either at the matriculation examination or at the higher secondary level examination mentions the date of birth of the student. Such certificate is invariably accepted as a valuable piece of evidence in proof of the date of birth and age of the applicant throughout his career ahead. The courts of law attach a high degree of probative value to the certificate and in the absence of anything to the contrary, the date of birth, as entered in the certificate, is accepted almost as binding. On the result of the examinations conducted by the Board having been published the successful candidates are awarded certificates. The name, father's name, date of birth the institution in which the student has studied and such other particulars as are incorporated in the certificate are based on the Information made available by the contents of the application form which is scrutinized, verified and forwarded by the institution, in which the student has studied. All these particulars carry with them a prima facie guarantee of correctness inasmuch as such particulars in the record of the institution are furnished by the applicant himself and the applicant himself fills in and subscribes to the application seeking entry in the examination conducted by the Board. It is difficult to assume that such particulars would be false or incorrect so far as the applicant is concerned. At the same time, this procedure becomes a part of the process of 'conducting examinations and publishing the results' as also the 'conditions under which the candidates shall be admitted to the examinations of the Board' the two subjects covered by clauses (d) and (g) of sub-Section (2) of Section 24 of the Act, apart from the

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

W P No. 17810 / 2017

NISHAB BANO QURESHI VS. STATE OF MP & ORS.,

--- 7 ---

generality of the power conferred by sub-Section (1) of Section 24. It cannot, therefore, be contended that the matter relating to certificates and as to correction of any entry made therein does not fall within the purview of the power to make Regulations conferred on the Board.

10. Nobody can claim a right to have corrected an entry in a certificate solemnly issued by an educational institution that too the one enjoying the status of a statutory Board under the Act. The right of the applicant to have an error or mistake corrected is accompanied by a duty or obligation on the part of the Board to correct its records and the certificate issued by it. Not only it is a corresponding duty or obligation, it has also to be perceived as a power exercisable by the Board to correct an entry appearing in the certificate issued by it. People, institutions and government departments etc.- all attach a very high degree of reliability, near finality, to the entries made in the certificates issued by the Board. The frequent exercise of power to correct entries in certificates and that too without any limitation on exercise of such power would render the power itself arbitrary and may result in eroding the credibility of certificates issued by the Board. We therefore, find it difficult to uphold the contention that the applicants seeking correction of entries in such certificates have any such right or vested right.

11. Lastly, the submission cannot also be countenanced that the regulatory measure engrafted into the Regulations on the subject of correction of errors in the certificates is 'absolute' in nature. The Regulation permits correction but subject only to reasonable restrictions.

12. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches 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

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

W P No. 17810 / 2017

NISHAB BANO QURESHI VS. STATE OF MP & ORS.,

--- 8 ---

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.

10. In the light of the aforesaid judgment, this Court is of the considered opinion that no case for issuance of an appropriate writ, order or direction, directing the respondent Board to correct date of birth, is made out. However, a liberty is certainly granted to the petitioner to file a Civil Suit in case the petitioner so desire, as purely disputed questions of fact are involved in the matter.

11. With the aforesaid, the present Writ Petition is dismissed.

(S. C. SHARMA)
J U D G E

KR