

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 368/2013.

Salman Arshed

Versus

**Federal Board of Intermediate and Secondary Education Islamabad through its
Chairman, etc.**

Petitioner by: Mr. Fahid Rafiq Verya, Advocate.

Respondents by: Ch. Imtiaz Ahmed, Advocate.

Date of Decision: 06.02.2020.

MOHSIN AKHTAR KAYANI, J:- Through this Civil Revision, the petitioner has called in question the judgment & decree dated 16.05.2013, passed by learned Civil Judge, 1st Class (West), Islamabad, whereby suit for declaration, permanent and mandatory injunction, filed by the petitioner was dismissed. The petitioner has also assailed the judgment & decree dated 10.09.2013, passed by learned Additional District Judge (West), Islamabad, whereby appeal against judgment & decree dated 16.05.2013, filed by petitioner was also dismissed.

2. Brief facts referred in this case are that petitioner requested the Federal Board of Intermediate and Secondary Education (FBISE), Islamabad for correction of his date of birth, spellings of his name and parentage, which were wrongly mentioned in Matric certificate as 18.12.1987 instead of 18.12.1988, Sulman Arshad S/o C. M. Arshad instead of Salman Arshed S/o C. M. Arshed. However, FBISE partly accepted the application of petitioner vide order dated 26.05.2018 (Ex.P-8), therefore, petitioner filed a suit for declaration, permanent and mandatory injunction in the Court of learned Senior Civil Judge, Sialkot, which was dismissed vide order dated 31.05.2011 for want of jurisdiction. Thereafter petitioner filed the suit for declaration, permanent and mandatory

injunction before Civil Judge, 1st Class, Islamabad, which was dismissed vide judgment & decree dated 16.05.2013 and his RFA was also dismissed vide judgment & decree dated 10.09.2013, passed by learned Additional District Judge (West), Islamabad. Hence, this civil revision.

3. Learned counsel for the petitioner contends that both the Courts below have not appreciated the overwhelming evidence available on record comprising of Ex.P2 (Form-B), Ex.P-3 (Passport), Ex.P-4 (Passport), Ex.P-5 (Passport), Ex.P-9 (copy of birth registration register of U.C. No.34, Mouza Gohdpur, Tehsil & District Sialkot) in which correct date of birth of petitioner has been mentioned as 18.12.1988 and as such respondents have no contrary evidence that Ex.P-2, Ex.P-3, Ex.P-4, Ex.P-5, Ex.P-9 are against the public record.

4. Conversely, learned counsel for the respondents contends that both the Courts below have rightly appreciated the legal position and dismissed the suit for declaration being time barred as well as on merit; that petitioner himself referred his date of birth as 18.12.1987 in Admission Form (Ex.D-1) and same could not be changed; that petitioner approached the office of respondents through application which was decided vide letter Ex.P-8 dated 26.05.2008, whereby his request for change of date of birth was turned down and as such the cause of action accrued to the petitioner was on 26.05.2008 but he filed suit for declaration on 19.08.2011, which is inherently time barred.

5. Arguments heard record perused.

6. Perusal of record reveals that petitioner filed a suit for declaration, permanent and mandatory injunction with the claim that his correct date of birth is 18.12.1988 and details of his name and his father name, date of birth mentioned in result card and Matric certificate issued by respondents is incorrect. The suit was contested by the respondents and learned trial Court framed 03 issues and decided the question in issue No.1 & 2 against the petitioner on the ground that suit was not filed within prescribed statutory period. The said judgment &

decree dated 16.05.2013 was upheld by the Appellate Court vide judgment & decree dated 10.09.2013, passed by learned Additional District Judge (West), Islamabad. Therefore, in order to resolve the controversy, it is necessary to settle the question of limitation at the first instance. The petitioner had submitted his admission form for Secondary School Examination Part-I on 11.12.2002 referred as Ex.D-1 with date of birth as 18.12.1987 in column No.15 of the said form, where-after, he was registered with reference to said date of birth and name spellings but after issuance of result card by the FBISE, petitioner has applied for correction of spellings of his name and date of birth with the contention that his name be called as "Salman Arshed" instead of Sulman Arshad and similarly he claims that his correct date of birth is 18.12.1988 instead of 18.12.1987.

7. Both the questions have been considered by FBISE and issued letter dated 26.05.2008, whereby the spellings of his name were acknowledged as Salman Arshad, however, his request for correction of date of birth was not acceded to. The said letter has been exhibited as Ex.P-8. The petitioner filed civil suit against the said findings of FBISE before the Civil Court at Sialkot being permanent resident of Sialkot, however, the said suit was resisted by respondents and finally learned Civil Court at Sialkot vide order dated 31.05.2011 dismissed the suit U/O VII Rule 10/11 CPC and petitioner approached the Civil Court at Islamabad and filed fresh suit which was contested by the respondents on the ground that FBISE Rules do not allow the Board to change or rectify the date of birth and name, however, the question of maintainability of the suit on the ground of limitation was not raised.

8. The petitioner put appearance before the Court as PW-1 and took stance that his date of birth was wrongly mentioned and claims rectification in the date of birth from 18.12.1987 to 18.12.1988. In support of his contention petitioner has produced Form B (Ex.P-2) issued by NADRA on 24.06.2006, whereby his date of birth referred as 18.12.1988. The said record is a public record, however,

petitioner has also placed his passport No.6549616 dated 23.06.1999 (Ex.P-3), another passport No.AP1915401 (Ex.P-4) and Passport No.AP1915402 (Ex.P-5), which contain the correct date of birth 18.12.1988. Similarly, the petitioner has produced copy of Birth Register (رجسٹر پیدائش) Union Council No.34, Mouza Gohdipur, Tehsil & District Sialkot referred as Ex.P-9 and justified his date of birth from the said record, which is a public record and same has been maintained by the competent authority under the law. All these documents spell out the correct date of birth of the petitioner as 18.12.1988 and this fact was referred by the petitioner for the first time through Ex.P-8 but the status of Ex.P-9, which is a public record has to be considered in the light of judgment reported as 1992 SCMR 1362 (Khan Bahadur (deceased) through his legal heirs and 2 others Vs. Ahmed Khan and another).

9. Besides the above referred position available from record the period of limitation if calculated on the basis of above mentioned facts has to be governed under Article 120 of the first schedule of Limitation Act, 1908 where no period of limitation is provided elsewhere in this schedule except 06 years time period for filing of the suit when the right to sue accrue and as such time period for filing of suit starts from the date of refusal by the Federal Board dated 26.05.2008 referred in Ex.P-8, the six years period in terms of Article 120 of the Limitation Act, 1908 expires on 25.05.2014, whereas the suit for declaration in this case has been filed on 05.09.2011, which is well within period of limitation, therefore, the findings rendered in para-7 of the impugned judgment & decree dated 16.05.2013, passed by learned Civil Judge, 1st Class (West), Islamabad are contrary to law, whereby learned trial Court has applied Article 96, whereby the relief was sought on the ground of mistake. This Court is of the view that Article 96 is applicable for correction of mistakes and petitioner has filed suit for declaration in terms of Section 42 of the Specific Relief Act, 1877, which has entirely different connotation and approach, hence, view taken by the learned trial Court for

calculation of limitation period is not correct. It is trite law that limitation has to be stretched in favour of plaintiff if two sets of Articles applied in any case, in such situation the limitation period which extends help in resolution of the proposition is to be applied, in this matter the petitioner is seeking declaration of his date of birth and if he succeeded in this regard that he born on 18.12.1988, his entire record has to be corrected.

10. The petitioner has produced the public record of birth registration of U.C No.34, Mouza Gohdpur, Tehsil & District Sialkot and as such there is no rebuttal. It is trite law that public record has been attached with sanctity and same could be challenged through any contrary evidence, however, in this case respondents have not produced any contrary evidence, rather relied upon Ex.D-1 Admission Form of secondary school certificate, which was filled by petitioner for appearance in his examination of Matriculation and as such mistakes have usually been occurred in the admission forms which require rectification as Civil Court being the Court of ultimate jurisdiction can look into the mistakes and illegality if committed during the process but in this case learned Civil Court has not considered the public record Ex.P-9 & Ex.P-3 in which date of birth of petitioner has been referred as 18.12.1988. As such passport was issued prior to Admission Form Ex.D-1, which was signed and filled on 11.12.2002, hence the judgment and decree of the trial Court is based upon misreading of documentary evidence.

11. I have also attended the judgment of the Appellat Court, however, legal position has not been appreciated in a proper manner and ignored the entire question of limitation, even the Appellate Court has declared Ex.P-9 birth register of village Gohdpur as not attested which is contrary to record as the same was exhibited and no objection was raised by the respondents' side when the said Ex.P-9 was placed on record. Reliance is placed upon 1987 CLC 1103 (NBP, Banu Branch Vs. Sayed Mir). Even otherwise, Ex.P-9 birth registration

record of petitioner was placed on record through Mian Zaffar Iqbal/PW-3, Secretary Union Council 34, who was record keeper and maintaining the said record under the law, hence, no contrary view could be taken as the findings of the learned Additional District Judge, Islamabad are not sustainable in the eyes of law. It is trite law that documents admitted in evidence and brought on record, contents of such documents could be read and given effect to by the Courts even in the absence of a plea by party to such effect in terms of Article 2(1) read with Article 113 of *Qanun-e-Shahadat* Order, 1984. Reliance is placed upon 2005 SCMR 1315 (Raza Munir and another Vs. Mst. Sardar Bibi and 3 others).

12. Birth registration record (Ex.P-9) of petitioner was maintained by the concerned Secretary U.C. 34/PW-3, who put appearance before the Court and verified the entries in terms of Article 49 of *Qanun-e-Shahadat* Order, 1984 in discharge of his official duties and as such it could not be denied by verbal assertion and such document could be admitted and can be taken into consideration. Reliance is placed upon PLD 2008 SC 612 (Mehr Khan Vs. Mst. Basaei) and PLD 1971 SC 516 (Ch. Muhammad Saleem Vs. Muhammad Akram and others).

13. While considering the above position of law the view taken by both the Courts below is not justified as per law as well as on record which could be rectified at the revisional stage as it is a fit case to exercise the jurisdiction U/S 115 CPC because Courts below have not exercised their jurisdiction vested in it and even they have exercised their jurisdiction in illegal manner despite availability of overwhelming evidence and have passed the judgment & decree against the petitioner who is otherwise entitled for the same under the law.

14. At last instant Civil Revision is barred by one day as it was filed beyond the prescribed period of 90 days, however, CM No.01/2013 for condonation of delay has been filed, whereby petitioner has taken a specific plea that due to misunderstanding he has failed to file the petition in time after obtaining the

certified copies, whereas it is trite law that when illegality has been committed by the Courts below, even the revision is time barred, this Court is equipped to apply the jurisdiction in terms of Section 115(1) CPC which is a *Suo-Moto* jurisdiction in aid of justice and not to defeat its ends being supervisory Court as this Court supervisory jurisdiction could not be abridged by any technicalities, therefore, delay in filing of civil revision is condoned for rectification of illegality committed by lower Courts while exercising the *Suo-Moto* powers of this Court. Reliance is placed upon 2012 SCMR 1942 (Province of Punjab through Collector, Toba Tek Sing Vs. Muhammad Fareed), 1999 SCMR 1060 (Rehmdill Vs. Province of Balochistan) and 1994 SCMR 833 (Govt. of NWFP Vs. Abdul Malik).

15. Keeping in view the above position, the concurrent findings passed by learned trial Court as well as learned Appellate Court vide judgments & decrees dated 16.05.2013 & 10.09.2013 are hereby set aside and instant civil revision is allowed, suit filed by the petitioner is hereby decreed in his favour and respondents' department is directed to rectify the mistake of date of birth and spellings of name and parentage as petitioner is succeeded in his claim for correction of his date of birth i.e. 18.12.1988 and name i.e. **Salman Arshed S/o C. M. Arshed**. The respondents department is directed to issue new certificate within period of 30 days. Office is directed to draw the decree sheet.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid