

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

C.R.No.231 of 2016

Federal Board of Intermediate & Secondary Education through  
its Chairman

**Versus**

Azam Ali Khan

**Date of Hearing:** 22.11.2016  
**Petitioner by:** Dr. Muhammad Azam Khan, Advocate,  
**Respondents by:** Shah-e-Mulk Yousafzai, Advocate,  
Mahmood ul Hassan (Superintendent),  
FBISE.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant civil revision petition, the petitioner, Federal Board of Intermediate and Secondary Education, Islamabad, impugns the order dated 31.03.2016, passed by the Court of the learned Additional District Judge (West), Islamabad, whereby the petitioner's appeal against the judgment and decree dated 27.11.2015, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said judgment and decree dated 27.11.2015, the learned Civil Court had decreed respondent No.1's suit for declaration and mandatory injunction seeking a change in his name (from "Azam Ali" to "Azam Ali Khan"), and date of birth (from "14.02.1993" to "13.02.1997") in his educational testimonials and official record. Vide the appellate order dated 31.03.2016, the learned Appellate Court, without going into the merits of the case, dismissed the petitioner's appeal as time-barred.

2. Learned counsel for the petitioner submitted that the respondent was born on 14.02.1993; that the respondent's admission form for the Secondary School Certificate (Part-II) Examination (Exh.D.F) shows the respondent's date of birth as 14.02.1993; that the respondent also swore an affidavit declaring that the entries made in the said admission form were true and correct; that in the said admission form, there is a certificate of the head of the institution (i.e. Principal, Aviation Army Public School & College (Boys Branch) Dhamial

Camp, Rawalpindi) which shows that the respondent's date of birth is 14.02.1993; that the said admission form was signed by the petitioner as well as his father/guardian on 24.12.2010; that the respondent's Secondary School Certificate dated 08.06.2012 (Exh.P.1), shows his date of birth as 14.02.1993. Learned counsel for the petitioner further submitted that all the documents on which the respondent placed reliance on were issued after Exh.D.F and Exh.P.1; that the petitioner's appeal was not barred by time; and that the learned Courts below had concurrently erred by not appreciating the law on the subject in its correct perspective.

3. On the other hand, learned counsel for the respondent submitted that the respondent was born on 13.02.1997, and not on 14.02.1993; and that the respondent's birth certificate dated 12.06.2016 (Exh.P.2), Form-B dated 26.08.2013 (Exh.P.3), Passport No.BU-4134601 dated 23.07.2014 (Exh.P.4), and Computerized National Identity Card dated 21.08.2015 (Exh.P.4) show his date of birth as 13.02.1997. Learned counsel for the respondent further submitted that the concurrent judgments and decrees passed by the learned courts below are strictly in accordance with the law and facts of the case; that the petitioner's appeal against the judgment and decree dated 27.11.2015, was grossly time barred; and that there was interpolation in the dates on the stamp affixed on the impugned judgment and decree of the learned Civil Court. Learned counsel prayed for the revision petition to be dismissed.

4. I have heard the learned counsel for the contesting parties, and have perused the record with their able assistance.

5. The record shows that on 02.07.2015 the respondent instituted a suit for declaration and mandatory injunction before the Court of the learned Civil Judge, Islamabad, seeking a change in his name (from "Azam Ali" to "Azam Ali Khan"), and date of birth (from "14.02.1993" to "13.02.1997") in all his educational testimonials and official record. The present petitioner was the defendant in the said suit. The petitioner/defendant contested the said suit by filing a written

statement. From the divergent pleadings of the contesting parties, the learned Civil Court framed issues on 29.09.2015. The respondent entered the witness box as PW.1, and produced Exh.P.1 (the Secondary School Certificate dated 08.06.2012 bearing Serial No.532367). This certificate had been issued to the respondent /"Azam Ali" whose date of birth was stated to be 14.02.1993. In addition to this, the respondent produced his birth certificate dated 12.06.2016 (Exh.P.2), Form-B dated 26.08.2013 (Exh.P.3), Passport No.BU-4134601, dated 23.07.2014 (Exh.P.4), and Computerized National Identity Card dated 21.08.2015 (Exh.P.4). All these documents show the respondent's date of birth as 13.02.1997.

6. The petitioner in its evidence produced Exh.D.F, which is the respondent's admission form dated 24.12.2010 for the Secondary School Certificate (Part-II) Examination. The respondent and his father have signed this form. In this form, the respondent's date of birth is stated to be 14.02.1993. This form also contains an affidavit sworn by the respondent deposing that the particulars in the said form were true and correct. This form was also signed by the Principal, Aviation Army Public School and College (Boys Branch) Dhamial Camp, Rawalpindi, who was the head of the respondent's institution when the said form was submitted. The entries made by the head of respondent's institution includes the respondent's date of birth i.e. 14.02.1993. As mentioned above, vide judgment and decree dated 27.11.2015, the learned Civil Court decreed the respondent's suit. The petitioner petitioner's appeal against the said judgment and decree was dismissed as time-barred.

7. Now, the respondent did not dispute the authenticity of Exh.D.F. In the suit, it was pleaded that wrong entry of the respondent's date of birth in his matriculation/Secondary School Certificate was caused by a 'clerical mistake'. In the said admission form (Exh.D.F), the respondent's date of birth was not only filled in figures but in words as well. Therefore, it cannot be said that there was a possibility of an error being committed by the petitioner in recording the respondent's date

of birth on the respondent's Secondary School Certificate. There is also no document to substantiate the respondent's plea that he applied to the petitioner for the correction of his date of birth entered in his educational testimonials.

8. In the said judgment and decree, the learned Civil Court has recorded that the respondent in his cross examination had deposed that he did not remember whether he had signed the same. After holding that the respondent's signature on the admission form (Exh.D.F) and his signature on the plaint were similar on comparison, the learned Civil Court could not have brushed aside Exh.D.F by holding that the entries in the admission form cannot bind the respondent since they were made when he was a minor. Therefore, the learned Civil Court has not given due evidentiary weight to the admission form (Exh.D-F). Since Exh.D.F was an admitted document, it deserved due weight and credence. The learned Civil Court misread the evidence by not appreciating that the admission form (Exh.D.F) had not just been signed by the respondent but also by his father and the Principal, Aviation Army Public School. The requirement of an endorsement by the head of the institution is to ensure that the entries made in the admission form are correct and as per the school record of the respondent. The respondent made no attempt to contradict the entries made in the said admission form by producing documents which pre-dated the said admission form. For instance, the respondent did not produce any record pertaining to his entry in school or college. At this stage, reference to the following case law would be apposite:-

- (i) In the case of Ijaz Mehmood Vs. Board of Intermediate and Secondary Education, Lahore (1999 CLC 984), the petitioner had furnished his date of birth to the Board at the time of registration as also at the time of forwarding his examination forms for the Matriculation examination. Subsequently, the petitioner applied to the Board for the correction of his date of birth from 01.04.1972 to 28.02.1976. Aggrieved by the rejection of his application by the Birth Committee of the Board, the petitioner filed

writ petition before the Hon'ble Lahore High Court. The Hon'ble High Court dismissed the writ petition. At paragraph 7 of the judgment, it is *inter-alia* held as follows:

*“7. ... It need be emphasized that the Board only records that date of birth which is furnished by students/candidates and if a student or a candidate wants to have that changed or wriggle out of it, he must give good reason to the Board and leave the matter to be decided as per its satisfaction which of course should not be arbitrary and should be in accord with the Regulation.”*

- (ii) In the case of Saima Iltaf Vs. Principal, Junior Burn Hall Girls College, Abbotabad (2001 CLC 972), the Hon'ble Peshawar High Court give preference to the date of birth entered in the petitioner's matriculation and intermediate certificates, to the one entered in the petitioner's medical certificate which had been freshly issued. Furthermore, in paragraph 04 of the said judgment, it has been held as follows:-

*“The Matric Certificate and the Intermediate Certificate undoubtedly show that the petitioner was born on 28.02.1972. The date of birth given in the certificate is taken from the Examination Forms submitted by the candidates. The Examination Forms are filled up by the candidates and the petitioner does not deny that she had given 28.02.1972 her date of birth in the form submitted by her. Additionally these forms were submitted through the college where the petitioner studied and the particulars given in the forms given by the candidates are generally checked by the school with the record maintained by them. It is, thus, clear that not only the petitioner consciously entered 28.02.1972 as her date of birth in Examination Form but such date of birth was in accordance with the date recorded by the school/college in their own record.”*

- (iii) In the case of Muhammad Hashim Ansari Vs. Board of Secondary Education, Karachi (2010 CLC 527), the Board of Education had issued matric certificate to the applicant mentioning the same date which the applicant had mentioned in his Admission Form. The Hon'ble High Court of Sindh upheld the dismissal of the suit filed by the applicant for the correction of the date of birth.
- (iv) In the unreported judgment dated 27.01.2015, passed in Civil Revision No.538-D/2002, titled, “Federal Board Vs.

Mustafa Nawaz”, this Court set aside concurrent judgments passed by the learned lower Courts decreeing the respondent’s civil suit seeking a change in his date of birth entered in his matriculation certificate. The respondent had produced his Computerized National Identity Card, birth certificate driving license and bank documents in support of his case. This Court allowed the Federal Board’s revision petition, vide the said judgment dated 27.01.2015. Paragraphs 14 and 15 of the said judgment are reproduced herein below:-

*“14. After careful perusal of evidence of the parties, it emerged that the respondent filed suit on 22.12.2001 to get his date of birth corrected as 02.01.1977 instead of 17.07.1978. Admittedly, he filed admission forms with his signatures with the same date of birth and subsequently obtained certificate in the year 1994 i.e. about seven years before filing of the suit. His evidence is silent on the point as to whether he made any effort in time to get his date of birth corrected and his mere assertion that now he came to know about the wrong entry in his educational documents, in no way, can be treated as sufficient to over come the longstanding delay. ...*

*15. ... The respondent at the time of filing of his admission form, himself mentioned his date of birth as 02.01.1977 and never challenged the said entry at any stage before filing of the suit in the year 2001.”*

9. Strong evidence of unimpeachable character is required to change the date of birth entered in a person’s educational testimonials. In this regard, documents, which pre-date the issuance of the educational testimonials in question, will have greater evidentiary value. The respondent's date of birth i.e.14.02.1993 entered in the respondent's Secondary School Certificate was based on the entries made by him and/or his father in the admission form submitted to the petitioner for the Secondary School Certificate examination. The respondent is, therefore, estopped from taking a position contrary to the one taken by him prior to the issuance of the said Secondary School Certificate. The Courts have to be vigilant and cautious in granting discretionary relief of declaration or permanent injunction in cases where plaintiffs seek a change in their names or dates of birth, particularly the ones in which the plaintiffs seek to change their dates of birth by subtracting a

few months or years from their actual age. In the instant case, the learned Civil Court gave weight to documents issued to the respondent after the issuance of the Secondary School Certificate.

10. All the documents relied upon by the respondent were issued after Exh.D-F dated 14.12.2010, and Exh.P.1 dated 08.06.2014. For instance, the respondent's birth certificate (Exh.P.2.) was issued on 12.06.2013; the respondent's Form-B (Exh.P.3) was issued on 26.08.2013; the respondent's passport (Exh.P.4) was issued on 23.07.2014; and the respondent's CNIC (Exh.P.5) was issued on 21.08.2015. Since Exh.P.2 to Ex.P.5 were issued after the respondent's Secondary School Certificate, the learned Civil Court could not, on the basis of such documents, decree the respondent's suit. In the case of Muhammad Faisal Vs. State Life Insurance Corporations (PLD 2007 Lahore 453), the appellant's date of birth in his National Identity Card was different to the one entered in his records maintained by the Board of Secondary Education, Lahore. The Division Bench of the Hon'ble Lahore High Court held that in such a situation the correct and true date of birth would be the one recorded in the records of the Board of Secondary Education being earlier in time.

11. It is also well settled that where there is a disparity in the date of birth entered in the educational testimonials of a person, and the National Identity Card or Birth Certificate, credence is to be given to the entry of the date of birth in the educational testimonials, unless there is cogent and convincing evidence to hold otherwise. In the case of Mohammad Arshad Vs. Noor Ahmad (2008 SCMR 713), credence was given by the Hon'ble Supreme Court to the petitioner's date of birth on his matriculation certificate as compared to his date of birth on his birth certificate and national identity card.

12. In the instant case, the birth certificate dated 12.06.2016 (Exh.P.2), was issued to the respondent more than nineteen years of his alleged date of birth (i.e. 13.02.1997). When a birth certificate is not issued within a reasonable time after birth, the entry of the date of birth in such a birth certificate has to be

corroborated by producing in evidence the register of births showing the applicant's date of birth.

13. By not requiring the respondent to produce the register of births maintained by the relevant Union Council or authority so as to prove that the date of birth entered in the respondent's birth certificate was correct, the learned Civil Court went against the law laid down by this Court. In the unreported judgment dated 29.06.2015, passed by this Court in Civil Revision No.170/2015, titled "Syeda Razia Bukhari Vs. Federal Board of Intermediate and Secondary Education, Islamabad", this Court upheld the concurrent judgments passed by the learned Courts below, whereby, the petitioner's suit seeking a change in her date of birth entered in her matriculation certificate, was dismissed. This Court did not give credence to the date of birth entered in a birth certificate, which was issued years after the petitioner's alleged date of birth. In paragraph 04 of the said judgment it has been, *inter alia*, held as follows:

*"4. ... The birth certificate has been tendered in evidence in original which shows the date of reporting the birth of the child is 19.03.2009, however, the register of Union Council or any other documents was not exhibited in evidence to show that the correct date of birth is 05.02.1988. ..."*

14. Furthermore, in another unreported judgment dated 27.01.2015, passed in Civil Revision No.538-D/2002, titled, "Federal Board Vs. Mustafa Nawaz", this Court held as follows:-

*"14. ... Moreover, in order to prove the contents of crucial document i.e. birth certificate Ex.P1, it was mandatory to produce and get examined birth register of the concerned union council pertaining to the year 1976-77 for ascertaining correctness and genuineness of the documents, but no such effort was made. There is also no explanation as to why birth certificate was got issued with a delay of more than eighteen years on 2.2.1995."*

15. The impugned judgment and decree dated 27.11.2015 passed by the learned Civil Court, on account of being contrary to the law laid down by this Court in the above mentioned cases, has lost its sanctity, and therefore, is liable to be set aside. A student and his/her parents have to be very careful, alert and vigilant while disclosing the date of birth at the time of submission of forms for the examination of Secondary School Certificate / Matriculation. The Secondary School Certificate



issued by the Board of Intermediate and Secondary Education goes with the life of a student as this certificate is the authenticated proof of the student's date of birth. Such a certificate is invariably accepted as a valuable piece of evidence in proof of the date of birth of the person in question throughout his career, and the Courts attach a high degree of probative value to the certificate, and the date of birth as entered in the certificate is accepted as almost binding.

16. A change in the date of birth recorded in matriculation certificate issued by the Board is a serious matter because it involves many consequences and particularly affects the date of retirement etc. In such cases, the Court needs to scrutinize the evidence carefully and interference should be made sparingly and with circumspection. The approach of the Court has to be cautious and not casual.

17. Now against the judgment and decree dated 27.11.2015, the petitioner filed an appeal on 06.01.2016. The learned Appellate Court has recorded that as per the stamp on the said judgment and decree, the petitioner applied for attested copies of documents on 08.02.2015, whereas the attested copies of the orders were provided on 06.01.2016. The learned Appellate Court also noticed overwriting in different ink on the date of the application on the stamp affixed on the last page of the attested copy of the judgment dated 27.11.2015. In order to determine as to why attested copies of documents were delivered to the petitioner, 28 days after the submission of the application for certified copies, the learned Appellate Court summoned the copyist of the copying branch of the learned Civil Court. According to the said appellate order, the copyist reported that the petitioner had applied for attested copies of the judgment and decree dated 27.11.2015 on 06.01.2016, and the required documents were prepared by the copying branch and delivered to the petitioner on the same day i.e. 06.01.2016. Based on this, the learned Appellate Court concluded that the petitioner had "maneuvered" the change the dates in order to cover the delay in the filing of the appeal. Assuming that the petitioner got the certified copies of the judgment and decree

passed by the learned Civil Court on the day on which the petitioner filed the application for same, the appeal would be barred by nine days. Upon the dismissal of the petitioner's appeal, the judgment and decree dated 27.11.2015 merged into the appellate order/decreed in appeal.

18. Be that as it may, the question that crops up in the mind is when the judgment of decree of the learned Civil Court is clearly the consequence of misreading of evidence or is contrary to the law laid down by the Superior Courts, will a revisional Court shut its eyes to the illegality in the such a judgment and decree simply because an appeal against the same has been dismissed as time-barred? I think not. As mentioned above, the judgment and decree dated 27.11.2015 passed by the learned Civil Court was contrary to the law laid down by the Superior Courts, and was also based on misreading of evidence. The mere fact the appeal against such a judgment and decree was dismissed on the ground of limitation, will not pose as an obstacle before a revisional court to set it aside in exercise of its *suo moto* revisional jurisdiction. In holding so, I am fortified by the law laid down in the following judgments:-

- (i) In the case of Muhammad Swaleh Vs. M/s. United Grain & Fodder Agencies (PLD 1964 SC 97), it has *inter alia* been held that the period of limitation for a revision petition "*will not stand in the way of the exercise of revisional power for these powers can be exercised suo motu.*" Furthermore, it was held that once the High Court is seized of a case in the exercise of its revisional jurisdiction it can in accordance with section 115 C.P. C., make such order in the case as it thinks fit.
- (ii) In the case of Town Municipal Administration Vs. Rifat Hussain (2003 CLC 1370), the respondent's suit for recovery was decreed by the learned Civil Court. The appellant's appeal against the judgment and decree was barred by time. The Honourable Peshawar High Court held as follows:-

*"5. ... even though the appeal is barred by time and delay has not been explained in accordance with the*

*requirements of law, the Courts of law cannot shut their eyes and allow injustice to reign Supreme. Leaving aside the appeal, this Court in view of the facts highlighted above shall be constrained to exercise its suo motu revisional power to prevent the abuse of the process of the Court and consequent injustice.”*

(iii) In the case of Oil and Gas Development Corporation Vs. Clough Engineering Limited (2003 YLR 353), the learned Civil Court, through a composite order had decided (1) the respondent’s application under Section 20 of the Arbitration Act, 1940 by referring the disputes between the parties to arbitration, and (2) the respondent’s application for interim injunction under Section 41 of the Arbitration Act, 1940 read with Order XXXIX, Rules 1 and 2 of the C.P.C. The appellant had assailed the composite order deciding the said applications in one appeal. Although the order referring the disputes to arbitration was appealable under Section 39 of the Arbitration Act, 1940, the order deciding the application for interim injunction was not. Even though no revision petition had been filed against the order deciding the application for interim injunction, the Hon’ble Lahore High Court finding the said order to be *prima facie* contrary to the law laid down by the Superior Courts, *suo moto* directed the office to draw up proceedings under Section 115 of the C.P.C. It was held that the Hon’ble High Court did not require an application to take cognizance of the matter under Section 115 C.P.C.

(iv) In the case of Mst. Bhagay Vs. Mst. Fatima Bibi (PLD 2004 Lahore 12), it has been held as follows:-

*“6. ...under section 115 of the Civil Procedure Code, “the High Court may make such order in the case as it thinks fit”, which means that in the exercise of supervisory jurisdiction, if a material irregularity or error of jurisdiction comes, to the notice of the Court, in the interest of justice, the Court can suo motu interfere and correct the findings of an issue.”*

(v) In the case of Mst. Iqbal Bibi Vs. Allah Yar (2004 YLR 1279), the Lahore High Court has held as follows:-

*“8. ... Once the revisional Court comes to the conclusion that order of the trial Court suffers from legal defects, amenable to its jurisdiction under section 115, C.P.C. it, under law can act in the like manner, as the trial Court can act. No doubt scope for interference of revisional Court is narrow but once revisional Court assumes jurisdiction in accordance with law, there is no restriction on its power to pass any order, obviously, according to the settled principles known for administration of justice. My this view gets support from the alighted judgments of the Honourable Supreme Court of Pakistan in the cases Karamat Hussain and others v. Muhammad Zaman and others PLD 1987 Supreme Court 139 and Sadiq Ali v. Taj Din and others PLD 1992 Lahore 158, though revisional powers have been exercised in the case in hand as a petition by the respondent whereas those could have been exercised suo motu whenever any illegality committed by the trial Court comes to its notice. In the case of Chairman, Board of Intermediate and Secondary Education, Balochistan, Quetta and 2 others v. Maleha Ejaz and another 1995 SCMR 1060, it was observed by the Honourable Supreme Court that revisional Court has powers to set right the judicial proceedings, wherever some illegality or irregularity committed by the Courts subordinate to it.”*

- (vi) This Court in the case of Kiran Arif Mian Vs. Kinza Khalid (PLD 2008 Islamabad 11), has held as follows:-

*“20. A High Court may exercise its revisional jurisdiction either suo motu or on an application of a person. But if a person makes an application under section 115(1), C.P.C. for invoking the revisional jurisdiction of the High Court, he has to make application within ninety days of the order sought to be revised. In my opinion, if some glaring illegality comes into the notice of the High Court, although through an application filed by a person beyond 90 days of the orders, the High Court may exercise its revisional jurisdiction. If a glaring mistake comes into the notice of the High Court, the High Court shall not ignore the same merely on the ground, that it has come to its notice through an application filed by a person beyond 90 days. The High Court may exercise suo motu revisional jurisdiction possessed by it in such a situation.”*

19. As regards respondent's desire to change his name from Azam Ali to Azam Ali Khan, in the case of Muhammad Kamran Behan Vs. Board of Secondary Education (2013 YLR 1044), the Hon'ble High Court of Sindh has held that a suit for declaration seeking a change in the name of the plaintiff was not maintainable under Section 42 of the Specific Relief Act, 1977.

20. In view of the above, since the judgment and decree dated 27.11.2015 passed by the learned Civil Court merged

into the appellate order/decreed in appeal dated 31.03.2016, the same is set aside, and the civil suit instituted by the respondent is dismissed. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2016**

**(JUDGE)**

**APPROVED FOR REPORTING**

Qamar Khan\*

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