

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

“Civil Revision No.326 /2016”

Federal Board of Intermediate & Secondary Education, Islamabad.

Versus

Shoaib Yaseen

Petitioner By: Mr. Mir Afzal Malik, Advocate

Respondent By: Barrister Muhammad Hassan Alam,
Advocate.

Date of Hearing: 22.07.2020

GHULAM AZAM QAMBRANI, J.:- Through the instant Civil Revision Petition, the petitioner has challenged the judgment & decree dated 14.01.2016 passed by the learned Civil Judge, 1st Class, Islamabad-West, and judgment & decree dated 11.05.2016 passed by the learned Additional District Judge-V, Islamabad-West, whereby the suit filed by respondent/ plaintiff was decreed and appeal filed by the petitioner/defendant was dismissed.

2. Briefly stated facts of the instant civil revision petition are that the respondent/plaintiff filed a suit for declaration and mandatory injunction against the petitioner/defendant stating therein that the petitioner/ Federal Board of Intermediate and Secondary Education (hereinafter referred as to the “**Board**”) has mentioned his incorrect date of birth in the academic educational certificate as 27.05.1994 instead of 27.05.1996. The respondent asked the petitioner/ Board to correct this mistake, but they refused.

3. Learned counsel for the petitioner has contended that the impugned judgments and decrees are results of miss-reading and non-reading of evidence available on record; the impugned judgments and decrees of the learned Courts below are not sustainable in the eyes of laws; that the appellate Court has not considered the legal aspect of the case regarding non-joinder of proper parties in the array of petitioner/defendant; the respondent

filed a suit for correction of his date of birth after lapse of many years; therefore, the petitioner is not in a position to change the record; that the learned trial Court has relied upon documentary evidence produced by the respondent through photo copies i.e. School leaving certificate of primary class and B-Form, which has no evidentiary value; that the suit of respondent is barred by time. Lastly, contended that the judgment and decree passed by the learned trial Court is illegal, against the facts and is liable to be set-aside.

4. Conversely, learned counsel for respondent has opposed the contentions of learned counsel for the petitioner and has stated that the appeal filed by the petitioner/Board was badly time-bared, as such, the learned Additional District Judge, Islamabad, rightly dismissed the same. Lastly, urged for dismissal of the instant petition.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record with their able assistance.

6. Perusal of record reveals that the respondent filed a suit for declaration and mandatory injunction challenging his date of birth in his Educational Certificate as 27.05.1994 instead of 27.05.1996. In support of his claim, he produced photocopy of Form-B as Mark-A, photocopy of proof of date of birth, issued by the Read Foundation School Bagh AK as Ex.P.2, photocopy of proof of date of birth duly issued by Fouji Foundation Model School Bagh AK as Mark-B, Photocopy of Register of entry of correction of date of birth duly made by Fouji Foundation School as Mark-C and attested copy of ex-party judgment and decree dated 26.02.2014 passed by the Civil Court, Bagh, Ex.P-3 whereas, the petitioner/ Board produced Ex.D-1, copy of Admission Form of the respondent.

7. While appearing as PW-1 the attorney of the respondent corroborated the facts narrated in the plaint. He stated that the actual date of birth of the plaintiff Muhammad Yasin Khan is 27.05.1996 whereas it has inadvertently been written as

27.05.1994 in his "School Leaving Certificate" and in his "Admission and Withdrawal Register". He further deposed that in Form-B of NADRA, the correct date of birth of the plaintiff has been entered as 27.05.1996.

8. Learned trial Court while relying upon the documentary evidence produced by the respondent through photo copies of Form-B, Mark-A, photocopy of proof of date of birth, issued by the Read Foundation School Bagh AK, Ex.P.2, photocopy of proof of date of birth duly issued by Fouji Foundation Model School Bagh Azad Kashmir, Mark-B, photocopy of Register of entry of correction of date of birth duly made by Fouji Foundation School, Mark-C and attested copy of ex-party judgment and decree dated 26.02.2014 passed by the Civil Court, Bagh, Ex.P-3, which have no evidentiary value being secondary evidence as per provisions of Qanun-e-Shahadat Order, 1984 as the documents were not tendered by the person, who issued the same nor the Record Keeper of the said documents was produced to confirm the genuineness of the said documents; as such, the learned Trial Court has committed material irregularity while giving findings on Issue No.1. On the other hand, the petitioner/ Board produced Ex.D-1, copy of Admission Form of the respondent duly filled and signed by the respondent. Further the respondent also not availed the proper remedy before the petitioner/ Board before filing of the civil suit but this fact was also ignored by the learned Trial Court while passing the impugned judgment and decree. The credibility of the documents produced by the respondent/ plaintiff was highly doubtful and objectionable. Since the photocopies of the documents tendered by the respondent/ plaintiff were improperly received in evidence, without the production of their originals and the conditions pre-requisite for permitting secondary evidence were also wanting and mere consent or omission to object to the reception of inadmissible evidence cannot be treated as a valid and legal piece of evidence because such departure of the rule appears to have a substantial effect on the decision of the Courts below, which if excluded might have resulted in varying the decision. In view of the facts and circumstances of the case, the

judgment and order impugned herein cannot sustain. Reliance in this regard is placed upon the case reported as “Hyderabad Development Authority through M.D., Civil Centre, Hyderabad Vs. Abdul Majeed and others” (PLD 2002 Supreme Court 84), wherein it has been held as under:-

“Besides adopting the reasons for not accepting this document in evidence, we further add that as per the statement of Mushtaq Ahmed, this conveyance was taken on record subject to its admissibility because the witness tendered its photocopy. Inasmuch as later on no steps were taken by the respondents to prove the contents of this document by leading primary or secondary evidence in terms of Articles 75 and 76 of Qanun-e-Shahadat Order, 1984. Therefore, this document also cannot be taken into consideration. It is also to be noted that merely by tendering a document in evidence it gets no evidentiary value unless its contents are proved according to law. ”

Documents cannot be produced by the learned counsel for the respondent in order to plug the loopholes or to address the deficiencies in the evidence of the respondent. In the case of “BABAP Enterprises Vs. United Bank Limited” (2011 CLC 1534), the Hon'ble Lahore High Court held as under

“that documents that could be exhibited or tendered in evidence by a witness, could not be exhibited in the statement of the counsel for a party. The statement of the counsel is not on oath and he is not cross-examined by the opposing party on the veracity and evidentiary value of the documents so tendered.”

In the case of “Muhammad Ashraf Vs. Shah Noor Khan” (1996 MLD 1819), it has been held *inter-alia* that documents which were required to be proved in accordance with the provisions of the Qanun-e-Shahadat Order, 1984, could not be tendered in evidence through bare statement of the counsel for a party and got exhibited even if there was no objection from the other side. Similarly, in the case of “Muhammad Ashraf Vs. Muhammad Tahir Ismail” (2011 MLD 1848), it has been held as follows:-

“So far as the production of original documents are concerned, under Article 78 of Qanun-e-Shahadat Order, 1984 without the proof of signature and hand writing of person alleged to have signed or written documents cannot be taken in evidence. The

production of these documents in the statement of learned counsel for the plaintiff was not permissible under the law."

9. In appeal, which was continuation of the said civil suit and during the appellate proceedings, the entire matter stood reopened before First Appellate Court but the learned Additional District Judge, Islamabad, failed to consider the material irregularity committed by the learned Trial Court, which had giving its findings basing upon the photocopies of the documents but dismissed the appeal, being not filed within the prescribed period of limitation.

10. The petitioner in its evidence produced Exh.D.1, copy of admission form of the respondent dated 09.12.2011 for the Secondary School Certificate (Part-II) Examination, which has been signed by the respondent and his father. In this form, date of birth of the respondent is mentioned as 27.05.1994 (Twenty seventh May, N.H and Ninety Four). This form also contains an affidavit sworn by the respondent deposing that:-

"all the entries made in the Admission Form are correct and I shall abide by the rules/regulations made and notified by the Board from time to time. I do hereby solemnly affirm and declare that my particulars as mentioned in the Admission Form are true and correct to the best of my knowledge and belief and also according to the School/ College records and nothing has been concealed therein. I further affirm that I shall not change my name, father's name etc, as mentioned herein."

11. This form was also signed by the Principal, Federal Government Public School, Bagh, who was the head of the respondent's institution. The entries made by the Head of respondent's institution includes the respondent's date of birth i.e. 27.05.1994. The suit of the respondent was decreed vide judgment and decree dated 14.01.2016 and the appeal filed by the petitioner/ Board against the said judgment and decree was dismissed as time-barred.

12. The respondent did not dispute the authenticity of Exh.D.1. In the suit filed by the respondent, it was averred that wrong entry of his date of birth in his matriculation/Secondary School Certificate

was caused by a 'clerical mistake'. In the said admission form (Exh.D.1), 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 date of birth of the respondent in his Secondary School Certificate. There is also no document to substantiate the plea of the respondent that he applied to the petitioner/ Board for correction of his date of birth entered in his Secondary School Certificate.

13. In the said judgment and decree, the learned Civil Court has recorded that

“perusal of admission form i.e. Ex.D.1 shows that the defendant incorporated the date of birth of the plaintiff in the educational certificate, in pursuance of his Admission Form which is normally filled by the teachers or clerks etc. It is crystal clear that photocopy of birth certificate/ Form-B as Mark-A, is much authentic document to prove the stance of the plaintiff as gospel truth as compared to the Admission Form/Ex.D.1.”

But the photocopy of the birth certificate/Form-B tendered by the respondent/ plaintiff was improperly received in evidence, without the production of its original and the conditions pre-requisite for permitting secondary evidence were also missing and mere consent or omission to object to the reception of inadmissible evidence cannot be treated as a valid and legal piece of evidence whereas on the other hand, as such, the learned trial Court cannot brush aside Exh.D.1 holding that the entries in the admission form, which is normally filled by the teachers or clerks, cannot bind the respondent, is merely based on presumptions whereas perusal of the “Admission Form” clearly shows that at the top it, it is clearly mentioned that “To be filled in by Candidate”. Therefore, the learned Civil Court has failed to give due evidentiary weight to the Admission Form (Exh.D-1). Since Exh.D.1 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.1) had not just been signed by the respondent but also by his father and the Principal, Federal

Government Public School, Bagh. 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. Reliance in this regard is placed upon the case reported as "Nazeer Ahmed Barach Vs. The State and another" (2005 P.Cr.L.J.).

14. In the case of "Ijaz Mehmood v. 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. Being aggrieved by the rejection of his application by the Birth Committee of the Board, the petitioner filed a writ petition before the Hon'ble Lahore High Court, which was dismissed and at paragraph 7 of the judgment, it is inter-alia held as under:

"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.

In the case of "Saima Iltaf v. 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."

15. In the unreported judgment dated 27.01.2015, passed in Civil Revision No.538-D/2002, titled, "Federal Board v. 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 overcome 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."

16. 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.

27.05.1994 entered in his Secondary School Certificate was based on the entries made by him and his father in the Admission Form submitted to the petitioner/ Board 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 plaintiff seeks a change in his name or date of birth, particularly the ones in which the plaintiff seeks to change his date 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. Reliance in this regard is placed upon the case reported as “Federal Board of Intermediate and Secondary Education through chairman versus Azam Ali Khan” (2017 YLR 906).

17. The documents produced in evidence by the respondent unless admitted in writing before the trial Court, by the petitioner within the meaning of Article 76(c) of Qanun-e-Shahadat Order, 1984 would not dispense with the requirement of the formal proof of the documents by primary evidence as provided by Articles 72 and 73 of the Order. Secondary evidence can be admitted only on one or more conditions laid down in Article 76 of Qanun-e-Shahadat Order, 1984 having been satisfied by the party tendering such evidence and; secondary evidence cannot be admitted of the contents of document without the non-production of the original having first been accounted for as required by the above-mentioned Article. The reception of secondary evidence without objection by the party against whom it is intended or required to be used in evidence cannot ordinarily object to the admission of such evidence at any subsequent stage, subject to provisions of Article 162 of Qanun-e-Shahadat Order, 1984.

18. All the documents relied upon by the respondent were issued after Exh.D-1 dated 09.12.2011. For instance, Form-B (Mark-A) was issued on 07.12.2012; photocopy of proof of date of birth issued by the Read Foundation School, Bagh, Ajaz Kashir, (Ex.P.2)

was issued on 17.05.2014; photocopy of date of birth issued by Read Foundation School, Bagh, Ajaz Kashir, (Mark-B) was issued on 25.05.2012, on photocopy of register of entry of correct date of birth made by Fuji Foundation School (Mark-C) no date is mentioned; and copy of judgment and decree dated 26.02.2014, passed by the Civil Court, Bagh (Exh.P.3) was issued on 26.02.2014 and the same is also an ex-parte judgment. Since all the above mentioned documents were issued after the issuance of Secondary School Certificate to the respondent, the learned Civil Court could not, on the basis of such documents, decree the suit of the respondent.

19. 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 v. 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.

20. 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 v. 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."

21. The impugned judgment and decree dated 14.01.2016 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 admission form 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.

22. 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.

23. In view of what has been discussed above, this revision petition is **accepted**. The impugned judgment dated 14.01.2016 and 11.05.2016 passed by the learned Civil Judge, 1st Class and the learned Additional District Judge Islamabad-West, are hereby set-aside and the case is remanded back to the learned Civil Judge for rewriting of judgment after hearing both the parties on exclusion of the documentary evidence, original whereof were not tendered in evidence by the respondent, on its own merits. Parties are at liberty, if so desired, to produce their documentary

evidence in support of their respective versions. Parties are directed to appear before the concerned learned Civil Judge, Islamabad-West, on **12.08.2020**, for further proceedings.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court, on 04th day of August, 2020.

JUDGE

Rana. M. Yt.

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