

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.S.A. No. 23 of 2016

Syed Akif Hussain Shah

Versus

FBISE and others

Date of Hearing: 14.12.2016
Appellant by: Mr. Naeem Hussain, Advocate.
Respondent No.1 by: Mir Afzal Malik, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant Regular Second Appeal, the appellant, Syed Akif Hussain Shah, impugns the order dated 24.10.2016, passed by the Court of the learned Additional District Judge (West), Islamabad, whereby the appellant's appeal against the order dated 28.05.2016, passed by the Court of the learned Senior Civil Judge (West), Islamabad, was dismissed. Vide the said order dated 28.05.2016, the learned Civil Court had dismissed the plaintiff's suit for declaration and mandatory injunction seeking a change in the plaintiff's date of birth from 12.04.1984 to 19.02.1985, in the records and documents.

2. Learned counsel for the appellant submitted that the concurrent orders passed by the learned Courts below were against the law and facts of the case; that the birth certificate issued by the Government of Punjab on 05.10.2013 shows the appellant's date of birth as 19.02.1985, and the date of the registration of his birth was 01.08.1985; that according to the appellant's identity card, passport, driving licence, marriage registration certificate and *nikahnama*, his date of birth was 19.02.1985; that the petitioner's date of birth in his Secondary School Certificate has been mistakenly entered as 12.04.1984; that the learned Courts below concurrently erred by not taking into account the overwhelming documentary evidence in the appellant's favour. Learned counsel for the petitioner prayed for the said orders passed by the learned Courts below to be set-aside, and for the appellant's suit to be decreed. In support of his

submissions, learned counsel for the appellant placed reliance on the law laid down in the cases of Pakistan Steel Mills Corporation Pvt. Ltd. Vs. Mohammad Ali (2014 MLD 440), Hasnain Faraz Vs. Chairman through B.I.S.E (2011 CLC 265), and Imran Khan Vs. Federation of Pakistan (2016 YLR 323).

3. On the other hand, learned counsel for respondent No.1 submitted that the appellant's second appeal was liable to be dismissed because the appellant had failed to point out anything contrary to the law or some usage having the force of law in the orders passed by the learned Courts below. He further submitted that as per the appellant's Secondary School Certificate, dated 22.01.2003, the appellant's date of birth was 12.04.1984; that the appellant did not produce any document issued prior in time to the appellant's Secondary School Certificate in order to establish that his date of birth was 19.02.1985; that the said certificate was issued on 22.01.2003, whereas the documents on which the appellant placed reliance upon were issued subsequently; that the suit was instituted by the appellant with a delay of more than twelve years after the issuance of the Secondary School Certificate; that the appellant's suit was time barred in terms of Articles 96 and 120 of the First Schedule to the Limitation Act, 1908. The learned counsel prayed for the appellant's second appeal to be dismissed. In making his submissions, learned counsel for respondent No.1 placed reliance on the law laid down in the cases of Saima Iltaf Vs. Principal, Junior Burn Hall Girls College, Abbotabad (2001 CLC 972), and Board of Intermediate and Secondary Education Vs. Javed Iqbal Bajwa (2005 YLR 2114).

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

5. The record shows that on 11.11.2015, the appellant filed a suit for declaration and mandatory injunction before the learned Civil Court, praying for a change in his date of birth from 12.04.1984 to 19.02.1985 in documents including the appellant's Matriculation/ Secondary School Certificate issued on

22.01.2003 by the Federal Board of Intermediate and Secondary Education, Islamabad/respondent No.1. Respondent No.1 contested the said suit by filing a written statement. From the divergent pleadings of the contesting parties, the learned trial Court framed issues. The appellant entered the witness box as P.W.-1 and produced his Matriculation Certificate dated 22.01.2003 (Exh.P.1), birth certificate dated 05.10.2013 (Mark-B), driving license (Exh.P.2), national Identity card dated 07.01.2013 (Exh.P.3), *nikahnama* dated 05.04.2015 (Exh.P.4), marriage registration certificate dated 07.12.2015 (Exh.P.5), and passport dated 07.01.1996 (Exh.P.6).

6. Other than the appellant's Matriculation Certificate, all the other documents tendered in evidence by the appellant show his date of birth as 19.02.1985. The appellant's date of birth in his Matriculation Certificate (Exh.P.1) is stated to be 12.04.1984. The conjoint reading of paragraphs 1 and 3 of the suit shows that the appellant's case was that the appellant's date of birth in his Matriculation Certificate was mistakenly entered as 12.04.1984. The learned counsel for the appellant could not dispute the fact that the appellant came to know about the alleged mistaken entry as regards his date of birth in his Matriculation Certificate when it was issued on 22.01.2003. Under Article 120 of the First Schedule to the Limitation Act, 1908, the limitation period for a suit for declaration is six years computed from the date when the right to sue accrued. The said civil suit was instituted by the appellant more than twelve years after the issuance of said Matriculation Certificate. Hence, the same was grossly time barred. At this stage reference to the following case law on the subject would be apposite:-

- (i) In the case of Board of Intermediate and Secondary Education Vs. Javed Iqbal Bajwa (2005 YLR 2114), the respondent had filed a civil suit on 23.03.1996, seeking a change in his date of birth recorded in his matriculation certificate issued in the year 1980. In Paragraph 05 of the said judgment it was held by the Hon'ble Lahore High Court, as follows:-

“5. I have heard learned counsel for the parties and hold that Article 120 of the Limitation Act, is applicable to the present case; the cause of action had accrued to the respondent, at the time when he received the matriculation certificate, in which allegedly, the incorrect date of birth was mentioned, but no suit was filed. Thereafter, respondent's application was rejected on 14-10-1986; no legal action was taken; the review was dismissed on 15-11-1986, yet the respondent did not approach the Court, resultantly, the cause of action under Article 120 even considered to be reoccurring, would have arisen to the respondent, on either of the above mentioned dates, but the case was brought on 26-3-1996, which is much after six years than 15-11-1986, the date of the order rejecting his review application, resultantly, the suit is blatantly barred by time and is liable to be dismissed on this score alone.”

- (ii) In the case of Muhammad Hashim Ansari Vs. Board of Secondary Education, Karachi (2010 CLC 527), the Hon'ble High Court of Sindh has held as follows:-

“It has come on record that the applicant at the time of filing his Admission Form had mentioned his date of birth as 19-11-1979. The respondent accordingly issued Matric Certificate in the year 1998 mentioning the same date of birth. The suit for correction in the date of birth was filed by the applicant after nine years. Counsel for the applicant is unable to point out any defect in the concurrent findings of both the courts below. In absence of any defect of misreading or non-reading of evidence in concurrent findings of two courts below, interference of High Court in civil revision amounts to improper exercise of revisional jurisdiction. It is settled law that re-examination and reappraisal of evidence is not permissible in revisional jurisdiction even if another view different from the impugned order can also be taken.”

- (iii) 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 this 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. Paragraph 15 of the said judgment is reproduced herein below:-

“15. In the present case, cause of action accrued to the respondent at the time when he received matriculation certificate in the year 1994, but no suit was filed by him within the period of six years and, therefore, his suit was barred by time and was liable to be dismissed on this account as period of limitation to challenged the wrong entry through declaration is six years whereas present suit was filed after seven years and, therefore, it was time-bared. 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.”

- (iv) Through another 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. In paragraph 04 of the said judgment it has been, *inter alia*, held as follows:-

“4. ... The petitioner passed her matric in the year 2003 whereas the suit for declaration and injunction was filed on 24.04.2014 after a period of about eleven years. The learned Trial Court, inter alia, held that the suit of the petitioner is barred by limitation, however, the learned Appellate Court decided the matter on merits. During the course of trial, the evidence led by the petitioner in the form of documents was partially by tendering photocopies of original documents. 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. ...”

7. It is 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. Reference in the regard may be made to 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.

8. In the case at hand the appellant's date of birth entered in his Matriculation Certificate was different to the one entered in documents (i.e. the appellant's identity card, passport, driving license, marriage registration certificate and *nikahnama*), which have all been issued years after the issuance of the said Matriculation Certificate. 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.

9. As regards the case law relied upon by the learned counsel for the appellant, the case of Pakistan Steel Mills Corporation Pvt. Ltd. Vs. Mohammad Ali (supra) is distinguishable inasmuch as it was held therein that the respondent had come to know in 2007 about the wrong entry regarding his date of birth in the joining report maintained by his employer. Furthermore, the concurrent judgments of the Courts below were also in the petitioner's favour. The judgment in the case of Hasnain Faraz Vs. Chairman through F.B.I.S.E is a judgment passed by a learned Single Bench of the Hon'ble Peshawar High Court, and the same does not appeal to me since in my view it is contrary to the law laid down by the Hon'ble Supreme Court in the case of Mohammad Arshad Vs. Noor Ahmad (2008 SCMR 713). The case of Imran Khan Vs. Federation of Pakistan (supra) relied upon by the learned counsel for the appellant does not concern the correction of the date of birth entered in the applicant's educational testimonials.

10. A second appeal lies only on the grounds mentioned in Section 100 CPC and not on questions of fact. Interference in second appeal under Section 100 C.P.C. was permissible only if the impugned judgments were contrary to law or if they had been rendered without deciding some material issue of law or there

had been any error or defect of procedure provided by law. I find the concurrent findings of the learned Courts below to be strictly in accordance with the law and based on logical reasoning. Hence, no interference is warranted.

11. In view of the above, the appeal 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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