

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.63/2019

**Federal Board of Intermediate and Secondary Education,
Islamabad
Versus
Mubeen Akbar**

Date of Hearing: 20.01.2020
Petitioner by: Mir Afzal Malik, Advocate
Respondent: Mr. Asim Waqar, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioner, Federal Board of Intermediate and Secondary Education, Islamabad, impugns the judgment and decree dated 30.11.2018 passed by the Court of the learned District Judge (West), Islamabad, whereby the respondent's appeal against the judgment and decree dated 19.09.2018 passed by the Court of the learned Civil Judge, was allowed and his suit for declaration and mandatory injunction was decreed. Vide the said judgment and decree dated 19.09.2018, the learned Civil Court dismissed the respondent's said suit for rectification of the date of birth in his matriculation certificate from 27.12.1995 to 07.12.1998.

2. Learned counsel for the petitioner drew the attention of the Court to the respondent's admission form (Exh.D/1), registration return (Exh.D/2) and registration card (Exh.D/3) for the Secondary School Examination and submitted that in the admission form, the respondent had entered 27.12.1995 as his date of birth; that respondent was estopped by his words and conduct from asking a change in his date of birth; that the said admission form contained the respondent's affidavit deposing therein that the entries made in the said admission form were correct; that the said admission form had also been signed by the respondent's father/guardian; that the said admission form had also been signed and stamped by the Principal of the respondent's School (Army Public School Abdul Hakeem Cantt., Khanewal); that the said admission form was exhibited before the learned Trial Court; that the suit of the respondent was barred under Section 3 of the Limitation Act, 1908; that the appeal of the respondent suffered from misjoinder

of parties; that learned appellate Court relied on photocopies of union council birth register despite the fact that the said documents were not produced by an official witness from the Union Council; and that the impugned judgment and decree passed by the learned District Judge is contrary to the law laid down by this Court in the case of Federal Board of Intermediate and Secondary Education Vs. Azam Ali Khan (2017 YLR 906). Learned counsel for the petitioner prayed for the revision petition to be allowed and for the impugned appellate judgment and decree dated 30.11.2018 to be set aside.

3. On the other hand, learned counsel for the respondent submitted that the wrong entry of the respondent's date of birth in the admission form was the result of an inadvertent mistake; that the respondent's correct date of birth i.e. 07.12.1998 has been correctly recorded in Exh.P/3 issued by N.A.D.R.A.; that the birth certificate issued by the Union Council (Exh.P/4) also mentions 07.12.1998 as his date of birth; that the birth certificate was issued on 19.11.2005 much prior to the matriculation examination in the year 2014; that since the documentary evidence produced by the respondent was not rebutted by the petitioner, the same stood admitted; that under Article 87 of the *Qanun-e-Shahadat* Order, 1984 certified copies of documents are admissible in evidence; and that the impugned judgment and decree passed by the learned appellate Court does not suffer from any legal infirmity. Learned counsel for the respondent prayed for the revision petition to be dismissed.

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

5. The record shows that on 14.02.2018, the respondent filed a suit for "*declaration and mandatory injunction*" praying for a declaration that his correct date of birth is 07.12.1998 instead of 27.12.1995. Furthermore, the respondent prayed for a direction to be issued to the petitioner to issue a fresh Secondary School Certificate with his correct date of birth. The petitioner/defendant contested the said suit by filing a written statement on 28.03.2018.

Learned trial Court framed following issues out of the divergent pleadings:-

- “(i) Whether the plaintiff is entitled to get a decree for declaration and mandatory injunction as prayed for ? OPP*
- (ii) Whether the plaintiff has no cause of action to file this suit ? OPD*
- (iii) Whether the suit of the plaintiff is false, frivolous and vexatious and defendants are entitled to get special costs U/S 35-A C.P.C.? OPD*
- (iv) Relief?”*

6. The respondent Mubeen Akbar appeared as PW-1 and tendered his affidavit (Exh.P/1) as his statement. In documentary evidence, he produced copies of his CNIC as Exh.P/2, Form B issued on 17.08.2016 as Exh.P/3, birth certificate issued by Union Council on 19.11.2005 as Exh.P/4, Secondary School Certificate issued on 05.12.2014 as Exh.P/5, challan form as Exh.P/6 and application form for correction of date of birth as Mark-A. The petitioner produced respondent's admission form (Exh.D/1), registration return sheet (Exh.D/2) and registration card for the Secondary School Certificate Examination (Exh.D/3).

7. The learned trial Court vide judgment and decree dated 19.09.2018 dismissed the respondent's suit. Aggrieved by the said judgment and decree, the respondent filed appeal which was allowed vide judgment and decree dated 30.11.2018 passed by learned District Judge. The said judgment and decree dated 30.11.2018 has been assailed in the instant petition.

8. In his examination-in-chief, the respondent deposed that he had passed his matriculation examination in the year 2014. The suit for declaration and mandatory injunction for correction of date of birth was filed by him on 14.02.2010. He did not explain the four years delay in filing of the suit. Although the limitation period for filing a suit for declaration is six years under Article 120 of the Limitation Act, 1908 but no explanation was given for the delay in filing of the suit.

9. In addition to above, the respondent admitted in his statement before the learned trial Court that in his admission form and roll number slip, his date of birth was mentioned as 27.12.1995 instead of 07.12.1998. The respondent had submitted that his teacher had filled the forms but he admitted his own signatures on the said form and also admitted his father's and

principal's signature on the admission form. In the said admission form, the date of birth is not only filled in figures but in words as well. The said admission form is signed by the parent/guardian of the student as well as the head of student's educational institution. 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. Therefore, it cannot be said that there was a possibility of an error being committed by the petitioner in recording the respondent's said date of birth in his Secondary School Certificate. The respondent is, therefore, estopped from taking a position contrary to the one taken by him at the time of submission of the admission form for the Secondary School Certificate Examination.

10. The documentary evidence produced by the respondent consisted of his CNIC, which was admittedly prepared in the year 2017 whereas the B-Form was issued by NADRA in the year 2016. Both these documents were prepared after the respondent's examination in the year 2014. Therefore, these documents could not override the entries made in the respondents secondary school certificate issued in the year 2014. As far as the birth certificate (Exh. P/4) is concerned, 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. Now the respondent did not 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 document (Exh-P/4) is not the register of births. It is a document showing the names of and dates of birth of all the children of Muhammad Nawaz (father of respondent). This document has also not been produced by any witness from the Union Council. The reliance placed by the learned appellate Court on such a birth certificate was thus erroneous and in this regard, the law has been laid down by this Court in the case of Federal Board of Intermediate and Secondary Education Vs Azam Ali Khan (2017 YLR 906), wherein it has been held that when a birth certificate is not issued in 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 correct date of birth of the person in question.

11. 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 appellate 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. ..."

Furthermore, in another unreported judgment dated 27.01.2015 passed in Civil Revision No.538-DI/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."

12. Now, since original birth register along with record keeper was not produced, no evidentiary value can be attached with the said birth certificate (Exh.P-4).

13. 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 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 her matriculation certificate as compared to her date of birth on her Birth Certificate and National Identity Card.

14. Strong evidence of unimpeachable character is required to change the date of birth entered in a person's educational testimonials. 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.

15. A student and his/her parents have to be very careful 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/her career, and 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, a Court needs to scrutinize the evidence carefully and interference should be made sparingly and with circumspection. The approach of a Court has to be cautious and not casual.

17. I am of the view that the learned appellate Court below has misread the evidence on the record and has not given credence to the law laid down by the Superior Courts especially the judgments referred to herein above. Therefore, the instant revision petition is allowed; the impugned judgment and decrees dated 30.11.2018 passed by the learned District Judge is set-aside, and the judgment and decree dated 19.09.2018 passed by learned Civil Court is restored. As a consequence, the respondent's suit for

declaration and mandatory injunction for rectification of the date of birth in his matriculation certificate, is dismissed. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

*Aamer Baig**