

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.136/2014

Federal Board of Intermediate and Secondary Education,
Islamabad

Versus

Ismat Begum

Date of Hearing:

02.12.2019

Petitioner by:

Mir Afzal Malik, Advocate

Respondent:

Ex-parte

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 20.01.2014 passed by the Court of the learned Additional District Judge (West) Islamabad, whereby the respondent's appeal against the judgment and decree dated 01.10.2013 passed by the Court of the learned Civil Judge, Islamabad was allowed. Vide the said judgment and decree dated 01.10.2013, the learned Civil Court dismissed the respondent's suit for declaration and rectification of the date of birth in her matriculation certificate.

2. Learned counsel for the petitioner submitted that the judgment and decree passed by learned appellate Court is not in accordance with the law; that the birth certificate (Exh.P/2) was admittedly issued after filing of the suit; that no other document had been produced by the respondent to prove her version; that the respondent admitted in her pleadings and in the evidence that she provided date of birth as 10.04.1987 instead of 10.04.1992 to the Board; that the suit was filed a long time after the respondent's matriculation examination therefore the respondent is estopped by her conduct from seeking a change in the date of birth; that the respondent did not even produce the result card wherein rectification was sought; that respondent did not produce any official witness to substantiate the record of Union Council; and that the impugned judgment and decree passed by the learned Additional 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 judgment and decree dated 20.01.2014 to be set aside.

3. Vide order dated 11.06.2019, the respondent was proceeded against *ex parte* and she had failed to appear before the Court despite service of notices on 31.05.2017 and 06.03.2019.

4. I have heard the contentions of the learned counsel for the petitioner and perused the record with his able assistance.

5. The record shows that on 06.07.2012, the respondent filed a suit for “*declaration and correction of the date of birth*” praying for a declaration that her correct date of birth is 10.04.1992 instead of 10.04.1987. Furthermore, the respondent prayed for a direction to the petitioner to incorporate her ‘*real and actual*’ date of birth in ‘*all the relevant documents*’.

6 The petitioner/ defendant’s right to file a written statement was closed vide order dated 10.10.2012. The petitioner challenged the said order in an appeal before learned District Judge, Islamabad. The said appeal was allowed vide order 27.05.2013 and the petitioner was granted an opportunity to file a written statement. However, the petitioner again defaulted in appearing before the learned trial Court and was proceeded against *ex parte* vide order dated 09.07.2013. The respondent appeared as PW-1 and her *ex parte* evidence was recorded. She tendered in evidence her affidavit (Exh.P/1). Learned counsel for respondent during the recording of his statement produced birth certificate (Exh.P/2) issued by Secretary Union Council Bara Banda, District Nowshera. According to contents of Exh.P/2, the respondent’s date of birth was 10.04.1992. This date of birth was entered on 22.10.2012. The birth certificate also shows that the respondent’s birth was registered in the ‘late entry’ category. The said birth certificate (Exh.P/2) was issued on the very same day of the registration, i.e. 22.10.2012.

7. The learned trial Court vide judgment and decree dated 01.10.2013 dismissed the respondent's suit. Aggrieved by the said judgment and decree, the respondent filed an appeal before the

learned Additional District Judge, which was allowed vide judgment and decree dated 20.01.2014. The said judgment and decree dated 20.01.2014 has been assailed in the present petition.

8. In her examination-in-chief, the respondent stated to have passed her matriculation examination in the year 2008. Although she filed the suit for declaration and correction of date of birth on 06.07.2012, she did not specifically explain as to why it took her four years to file the suit. True under Article 120 of the Limitation Act, 1908, the limitation period for filing a suit for declaration is six years but fact remains that the respondent kept silent regarding the alleged mistake in her date of birth for several years after issuance of result card. During her evidence, the respondent did not produce an application moved to the petitioner for correction of her date of birth.

9. In addition to above, the respondent admitted in her statement before the learned trial Court that she herself mentioned her date of birth as 10.04.1987 instead of 10.04.1992. The respondent had submitted that the wrong entry of her date of birth was caused by an inadvertent mistake. It cannot be disputed that the date of birth is maintained by the petitioner/Board on the basis of admission form submitted by a student. 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 her Secondary School Certificate. The respondent is, therefore, estopped from taking a position contrary to the one taken by her at the time of submission of the admission form for the Secondary School Certificate Examination.

10. The only documentary evidence produced on the respondent's behalf before the learned trial Court was birth certificate (Exh-P2) that too had been produced when the

statement without oath of the respondent/plaintiff's counsel was being recorded. The said birth certificate (Exh.P.2) shows that the respondent's birth was registered and the certificate was issued to the respondent simultaneously on 22.10.2012, i.e. more than twenty two years of her alleged date of birth (i.e. 10.04.1992). 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 as 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 reliance by the learned appellate Court on such a birth certificate was erroneous. In the case of Federal Board of Intermediate and Secondary Education Vs Azam Ali Khan (2017 YLR 906), 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. 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 4 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-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.”

12. Now, since the birth certificate (Exh.P-2) was not produced during the statement of the respondent but was produced as additional evidence by the learned counsel for the respondent/plaintiff, and since original birth register along with record keeper was not produced, no evidentiary value can be attached with the said birth certificate (Exh.P-2).

13. Another important aspect which went unnoticed by the learned appellate Court was that the respondent did not even produce the result card wherein she sought to have her date of birth corrected. This gap in her evidence was material but the learned appellate Court while decreeing the suit of respondent did not advert to this vital aspect of the case. It bespeaks a sorry state of affairs that the learned appellate Court decreed the suit for rectification of date of birth in a document which was not even produced in evidence and this amounts to a significant lapse in appreciation of evidence.

14. 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.

15. 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.

16. 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/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.

17. 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.

18. 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 decree dated 20.01.2014, passed by the learned Additional District Judge is set-aside, and the judgment and decree dated 01.10.2013 passed by learned Civil Court is restored. As a consequence, the respondent's suit for declaration and rectification of the date of birth in her matriculation certificate, is dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

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