

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.496/2015

Federal Board of Intermediate and Secondary Education,
Islamabad
Versus
Raj Wali Khan

Date of Hearing:	07.11.2019
Petitioner by:	Mir Afzal Malik, Advocate
Respondent by:	Mr. Khaliq Ur Rehman Saifi, 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 21.10.2015, passed by the Court of the learned Additional District Judge (West), Islamabad, whereby the petitioner's appeal against the judgment and decree dated 30.05.2015, passed by the Court of the learned Civil Judge, was dismissed. Vide the said judgment and decree dated 30.05.2015, the learned Civil Court decreed the respondent's suit for declaration and rectification of the date of birth in his matriculation result card.

2. Learned counsel for the petitioner submitted that the respondent's suit was barred under section 3 of the Limitation Act, 1908; that respondent filed the suit after about 19 years of the issuance of the matriculation result card; that the plaintiff's suit suffered from misjoinder of parties; that the documents produced by respondent were of no evidentiary value as the same were prepared after filing of suit; and that the concurrent judgments and decrees passed by the learned Courts below are contrary to the law laid down by this Court in the case of Syed Akif Hussain Shah versus FBISE (2017 MLD 923). Learned counsel for the petitioner prayed for the revision petition to be allowed.

3. On the other hand, learned counsel for the respondent submitted that the respondent got the knowledge of the incorrect entry of his date of birth when the matriculation result card was issued on 27.12.2013; that the suit of respondent was within the limitation period; that the respondent's correct date of birth i.e.

03.06.1979 has been recorded in Exh.P/1 to Exh. P/5 issued by the Schools where he had been studying; and that the concurrent judgments and decrees passed by the learned Courts below do 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 perused the record with their able assistance.

5. The record shows that on 10.09.2014, the respondent filed a suit for "*declaration of rights*" praying that his correct date of birth is 03.06.1979 instead of 03.06.1976. Furthermore, the respondent prayed for a direction to the petitioner to incorporate the respondent's correct date of birth in their records. The petitioner contested the said suit by filing a written statement. After the framing of issues, respondent tendered in evidence a verification slip of Federal Government High School Mardan Cantt. (Exh. P/1), extract from register of admissions/withdrawal (Exh. P/2), school leaving certificate of government High School Gujjar Ghari Mardan (Exh. P/3), admission certificate Primary School Gujjar Ghari Mardan (Exh. P/4), certificate regarding verification of his date of birth/ registration No. in Government Primary School Gujjar Ghari Mardan, issued by the incharge of the said school (Exh. P/5), CNIC issued by NADRA (Exh. P/6), application form for correction of date of birth submitted by the respondent to the petitioner (Exh. P/7). The petitioner, in its evidence produced Exh.D/1, which is certified copy of policy laying down period for keeping old record.

6. The learned counsel for the respondent could not dispute the fact that the respondent appeared in the matriculation examination in 1996 and had failed. Respondent nowhere claimed that he was not issued a result card for his matriculation examination in the year 1996. Before the learned trial Court the respondent during his examination-in-chief stated that he appeared in the matriculation examination of Federal Board of Intermediate and Secondary Education ("F.B.I.S.E.") about eighteen years ago in 1996; and that he failed in the said

examination and that F.B.I.S.E. issued failed result card No. 948040. This deposition is important because it shows that a result card was issued to the respondent in the year 1996. Thus the cause of action accrued to the respondent in the year 1996 and the period of limitation is to be reckoned from that date. Learned Courts below relied upon date of issuance of result card which was not produced during evidence, therefore the learned trial Court as well as learned appellate Court committed an illegality in deciding the issue of limitation on the basis of a document which had not even been tendered in evidence.

7. Now, 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 respondent more than eighteen 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. ...”

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

9. 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.

10. 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.

11. In the case of Saima Iltaf Vs. Principal, Junior Burn Hall Girls College, Abbotabad (2001 CLC 972), it was held that in order to substantiate the contents of a birth certificate, the relevant register where the date of birth is entered has to be produced. In the case at hand, the respondent's birth certificate was not issued either by the relevant Union Council or by N.A.D.R.A. or its predecessor institution. This is a material lapse in the respondent's case which has not been noticed by the learned Courts below.

12. I am constrained to observe with dismay that the learned Courts below decreed the suit of respondent for change in his date of birth on the basis of document which was not even part of the record. The learned Courts below have misread the evidence on the record and have not given credence to the law laid down by the Superior Courts especially the judgments referred to herein above.

13. In view of above, the instant revision petition is allowed; the concurrent judgments and decrees dated 21.10.2015 and 30.05.2015, passed by the learned Courts below are set-aside, and consequently, the respondent's suit for declaration and rectification of the date of birth in his matriculation certificate, is dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

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