**2017 C L C Note 200**

**[Lahore (Multan Bench)]**

**Before Mudassir Khalid Abbasi, J**

**CHAIRMAN, BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, MULTAN and others---Petitioners**

**Versus**

**MUHAMMAD SHAHZAD ASLAM---Respondent**

C.R. No. 215-D of 2011, heard on 1st February, 2017.

**Punjab Boards of Intermediate and Secondary Education Act (XIII of 1976)---**

----S. 29---Civil Procedure Code (V of 1908), S. 9---Correction of date of birth and father's name in matriculation certificate---Defendant/Education Board challenged jurisdiction of Civil Court---Education Board contended that Punjab Boards of Intermediate and Secondary Education Act, 1976 barred jurisdiction of Civil Court to adjudicate the matter and further submitted that plaintiff himself filled up date of birth and parentage in his admission form---Respondent/plaintiff contended that decree and judgment of the two courts below were justified as his date of birth in Union Council certificate was correct, similarly correct name of his father was incorporated in CNIC of his father---Validity---Respondent/plaintiff himself appeared before the court and got his statement recorded to the effect that his actual date of birth was 01-01-1983 which had wrongly been inserted as 01-01-1981 in the matriculation certificate whereas his father's name had also been wrongly mentioned and at the time of issuance of the CNIC such was pointed out by the NADRA authorities---Respondent/plaintiff was cross-examined but no material discrepancy was found regarding the said facts---Exhibited birth certificate issued by the Secretary Union Council corroborated the stance taken by the plaintiff/respondent---Moreover, CNIC of the father of the respondent also revealed the correct name of father---No evidence was produced by the petitioner/defendant to rebut the contents of the plaint except that the entries, age and father's name, were made in the documents of the Board by the respondent himself---Contention about ouster clause, in terms of S. 29 of the Punjab Boards of Intermediate and Secondary Education Act, 1976 was repelled because, S. 9 of the Civil Procedure Code 1908 conferred the plenary jurisdiction to the civil court which could not be taken away in a situation where the aggrieved person found himself remediless, particularly, when a dispute required detailed evidence in order to resolve a factual controversy---Respondent had no alternate forum for redressal of his grievance---High Court declined interference in the concurrent findings of the courts below---Revision petition was dismissed accordingly. [Paras. 6, 7 & 8 of the judgment]

            Shakeel Javed Ch. for Petitioners.

            Rao Ubaid Ali Bahadur for Respondent.

            Date of hearing: 1st February, 2017.

**JUDGMENT**

**MUDASSIR KHALID ABBASI, J.---**Through this constitutional petition, petitioner has challenged the legality of judgment and decree dated 04.02.2010 passed by learned Civil Judge, Multan and judgment and decree dated 25.10.2010 passed by learned Additional District Judge, Multan.

2.         Brief facts of the case are that respondent filed a suit for declaration and mandatory injunction. According to the contents of the plaint name of the respondent is Muhammad Shahzad Aslam and his father name is Muhammad Aslam and date of birth of the respondent is 01.01.1983, whereas according to the matriculation certificate of Board of Intermediate and Secondary Education, Multan his date of birth has wrongly been mentioned as 01.01.1981 and his father's name has wrongly been written as Mian Muhammad Aslam Bodhlah instead of Muhammad Aslam. At the time of application before the NADRA authorities an objection was raised regarding the difference of the parentage and date of birth between the matriculation certificate and the birth certificate issued by the Union Council. In this background respondent has filed aforestated declaratory suit.

3.         Suit was contested by the petitioners/defendants firstly on the ground regarding maintainability of this writ petition that section 29 of the Punjab Board of Intermediate and Secondary Education Act, 1976 envisages an ouster clause, civil Court lacks jurisdiction to adjudicate upon the matter and secondly respondent/plaintiff has himself filed the admission form wherein date was mentioned as 01.01.1981. Out of the pleadings following issues were framed:-

1.         Whether plaintiff's actual date of birth is 01.01.1981 and is liable to be corrected accordingly in the education certificates as prayed for? OPP

2.         Whether the plaintiff has no cause of action and locus standi to bring the present suit? OPD

3.         Whether this court has no jurisdiction to adjudicate the suit in hand? OPD

4.         Relief.

Suit was decreed in favour of the respondent vide judgment and decree dated 04.02.2010 whereas the appeal filed by the petitioner was dismissed by the lower appellate court vide judgment and decree dated 25.10.2010.

3.         Learned counsel for the petitioner has argued that impugned judgments and decrees are against the law and facts of the case. Further contends that sufficient legal evidence was available on the record to visualize that the respondent himself had filled up date of birth in the admission form and the same was taken down in the Secondary School Certificate and the petitioner had not violated any law, in any manner, to take it down of their own accord. Further argued that under sections 29 and 31, of Punjab Boards of Intermediate and Secondary Education, Act, 1976, the jurisdiction of the Civil Court is barred. States that it is held by the apex court in PLD 2009 SC 879 and 1997 SCMR 1368 that when there is conflict between two judgments of Supreme Court of Pakistan, the judgment of larger Bench shall prevail upon. Further states that the findings of two courts below on the question of jurisdiction are result of misreading and non-reading of evidence and faulty application of law.

4.         On the other hand, learned counsel for the respondent has argued that according to the birth certificate issued by the Union Council the date of the birth of the petitioner is 01.01.1983 whereas according to Mark-A/NIC of the father of the respondent, his name is written as Muhammad Aslam. Further argued that the jurisdiction of civil court cannot be taken away through an ouster clause, particularly, in the facts and circumstances of present case.

5.         I have given my conscious thought to the contentions of learned counsel for the parties and perused the record.

6.         Respondent/plaintiff himself appeared before the court and got his statement recorded to the effect that his actual date of birth is 01.01.1983 which has wrongly been inserted as 01.01.1981 in the matriculation certificate whereas his father name has wrongly been mentioned as Mian Muhammad Aslam Bodhlah instead of Muhammad Aslam and at the time of issuance of the identity card this was pointed out by the NADRA authorities. Respondent/plaintiff was Cross-examined but no material discrepancy is found regarding the afore-stated facts.

7.         On the other hand, the birth certificate (Exp-P-1) issued by the Secretary, Union Council Gardespur, District Multan, corroborates the stance taken by the plaintiff/respondent. Moreover, Mark-A the CNIC of the father of the respondent also reveals that the parentage of respondent is Muhammad Aslam. There is no evidence produced by the petitioner/defendant to rebut the contents of the plaint except that the entries were made in the documents of the Board by the respondent himself.

8.         So far as the argument of the counsel for the petitioner regarding the ouster clause, in terms of section 29 of the Punjab Board of Intermediate and Secondary Education Act, 1976 is concerned, section 9 of the Civil Procedure Code confers the plenary jurisdiction to the civil court which cannot be taken away in a situation where the aggrieved person find himself remediless, particularly, when a dispute requires detailed evidence in order to resolve a factual controversy. Respondent had no alternate forum for redressal of his grievance where the revision petitioner himself is a party to the controversy.

            What has been discussed above, I am not persuaded to interfere in the concurrent findings of the courts below. This revision petition does not succeed and is dismissed with no order as to cost.

MQ/C-17/L                                                                                         Petition dismissed.