JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A.No.104 of 2020
Qaiser Yaqoob
Versus
National Database Registration Authority

Date of Hearing:	28.11.2022
Petitioner by:	Ch. Muhammad Nasir, Advocate.
Respondent by:	Syed Junaid Jaffar, Law Officer, NADRA.

MIANGUL HASSAN AURANGZEB, J:- Through the instant Regular First Appeal, the appellant, Qaiser Yaqoob, impugns the judgment and decree dated 14.02.2020 passed by the Court of the learned Civil Judge, Islamabad-West, whereby his suit for declaration and mandatory injunction, was dismissed. In the said suit, the appellant prayed for a declaration to be issued to the effect that his actual date of birth is 07.02.1979 instead of 1978 as recorded by the respondent / National Database and Registration Authority ("**NADRA**").

2. Learned counsel for the appellant submitted that the appellant's correct date of birth i.e. 07.02.1979 is mentioned in his birth certificate, school leaving certificate and the certificate issued by the school where the appellant studied up to seventh standard; that the NADRA issued the appellant's Computerized National Identity Card (**"CNIC"**) with incorrect date of birth which was not corrected in spite of the all above documents; that the appellant was constrained to institute a civil suit; that the appellant produced in evidence all the documents mentioned above; that the learned trial Court dismissed the appellant's suit without appreciating the said documents; that the impugned judgment and decree suffers from misreading and non-reading of the evidence; and that the impugned judgment and decree does not take into account the date of entries rather was mislead by date of issuance of the certificate. Learned counsel for the appellant prayed for the appeal to be allowed in terms of the relief prayed therein. In making his submissions, learned counsel for the appellant placed reliance on the law laid down in the cases of Samia Khan Vs. Federal Board of

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Intermediate and Secondary Education (2021 MLD 1815), and Imran Khan Vs. Federation of Pakistan (2016 YLR 323).

3. On the other hand, learned Law Officer for NADRA submitted that the appellant's suit was liable to be dismissed because he did not disclose the cause of action; that the appellant has failed to point out anything contrary to the law or some usage having the force of law in the impugned judgment and decree passed by the learned Court below. He further submitted that the appellant for the first time applied for issuance of CNIC from NADRA in the year 2005; that according to the information provided by the appellant, his date of birth was mentioned as 1978; that the appellant got renewed his CNIC in the year 2013 wherein again his date of birth was mentioned as 1978; that after several years, the appellant instituted the suit on 20.05.2019; that he did not explain such a long delay in instituting the suit; that during the evidence the appellant admitted that before the institution of the suit he did not apply to NADRA for the correction of his date of birth; that the appellant did not produce any document issued prior to the renewal of his CNIC; that the appellant's CNIC was renewed on 10.01.2013 whereas the documents on which the appellant places reliance, were issued subsequently; that during the evidence, the appellant did not contest NADRA's stance that the appellant's first CNIC was issued in the year 2005; that the suit was instituted by the appellant with a delay of more than eight years after the issuance of the first CNIC in the year 2005; and that the learned trial Court rightly concluded that the appellant's suit was time barred in terms of Article 120 of the First Schedule to the Limitation Act, 1908 (**"the 1908 Act"**). Learned Law Officer prayed for the appellant's appeal 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 20.05.2019, 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 1978 to 07.02.1979 in his CNIC issued on 10.01.2013 by NADRA. NADRA contested the said suit by filing a written statement. From the

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divergent pleadings of the contesting parties, the learned trial Court framed issues. The appellant as PW-1 recorded his statement through his affidavit (Exh.P.1) and produced his birth certificate dated 17.09.2018 (Exh.P.2), school leaving certificate dated 15.06.2017 (Exh.P.3), a Handwritten Certificate issued by the Principal of Islamabad Model School (Exh.P.4), National Identity Card dated 10.01.2013 (Exh.P.5) and copy of his old CNIC as Mark-A. NADRA's representative, namely Muhammad Yaseen entered the witness box as DW-1 and stated that the appellant applied to NADRA for issuance of the CNIC in the year 2005 and at that time he got recorded his date of birth as 1978. He further stated that the appellant never approached NADRA for the correction of his date of birth. The said witness produced the appellant's application form that was submitted in the year 2005 as Exh. D-1/1 and D-1/2

6. The handwritten certificate that the appellant produced as Exh.P.4 is undated while all the remaining documents tendered in evidence by the appellant show that they were issued later than the issuance of his CNIC (Exh.P.5) on 10.01.2013. The learned trial Court has rightly observed in the impugned judgment that the appellant did not cross-examine the respondent's stance that a CNIC was first time issued to him in the year 2005 and in the said CNIC, his date of birth was mentioned as 1978. According to the appellant's own affidavit Exh.P.1, his year of birth was mentioned as 1978 in his old National Identity Card Mark-A issued prior to the establishment of NADRA. The issuance date on the said Mark-A is mentioned as 04.03.1999. Throughout his pleadings and the statement, the appellant did not mention the date on which he discovered that his date of birth was incorrectly mentioned in his CNIC. During the cross-examination, the appellant clearly admitted that he never approached NADRA for the correction of his date of birth. In the circumstances, it cannot be disputed that the appellant came to know about the alleged mistaken entry as regards his date of birth in the CNIC when it was issued in the year 2005 and when it was renewed on 10.01.2013. Under Article 120 of the 1908 Act, the limitation period for a suit for declaration is six years computed from the date when the right to sue accrues. The said civil suit was instituted by the appellant more than fourteen years after the

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issuance of said CNIC in the year 2005 and after six years, three months and ten days from the issuance of renewed CNIC (Exh.P.5) on 10.01.2013. 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 Paragrpah 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

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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."*

7. The appellant did not appear in a Board examination therefore, no certificate to that effect was issued. He had, however, produced school leaving certificate and birth certificate which were issued several years after the issuance of CNIC/Exh.P.5. Since the said CNIC/Exh.P.5 was issued earlier in time, therefore, credence is to be given to the same. 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 Intermediate and 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 Intermediate and Secondary Education being earlier in time.

8. As regards the case law relied upon by the learned counsel for the appellant, the same is distinguishable since unlike the cases referred at bar, the appellant is admittedly employed in a Government School. Furthermore, in the said cases ample evidence was produced to show that the relevant authorities were approached for correction of the date of birth and the suit was instituted within limitation period.

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9. Additionally, for the birth certificate to be given credence, it was necessary for the appellant to produce the register pertaining to the dates of birth maintained by the relevant Union Council or the authority so as to prove that the date of birth entered in his birth certificate was correct. 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 any 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. ..."***

10. 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."***

11. Now, since the original birth register along with record keeper was not produced, no evidentiary value can be attached with the said birth certificate (Exh.P-2). A change in the date of birth recorded in matriculation certificate issued by an authority 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. In the impugned judgment and decree dated 14.02.2020, the learned trial Court has

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dealt with all the legal and factual aspects of the case and I have not been given any reason warranting interference in the said judgment and decree.

12. In view of the above, the instant appeal is dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN OPEN COURT ON 05.12.2022.

JUDGE

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