ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A.No.663 of 2021
Muhammad Ahsan-ur-Rehman
Versus
Federal Board of Intermediate and Secondary Education through its Chairman

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	21.12.2021	Mr. Iftikhar Ahmed Bajwa, Advocate for the appellant.

Through the instant appeal, the appellant, Ahsan-ur-Rehman, impugns the judgment and decree dated 02.10.2021 passed by the Court of the learned Civil Judge Islamabad-West, dismissing his suit for declaration and mandatory injunction. In the said suit, the appellant had sought a declaration to the effect that his correct date of birth is 27.03.1991 instead of 27.10.1989, as recorded in his educational testimonials.

2. Learned counsel for the appellant submitted that the appellant's correct date of birth is 27.03.1991 which has been wrongly mentioned in his Secondary School Certificate as 27.10.1989; that during the trial, the appellant had produced his C.N.I.C. issued by the National Database Registration Authority **("N.A.D.R.A.")** (Exh.P-3), wherein his date of birth is mentioned as 27.03.1991; that the same date of birth is mentioned in the appellant's birth certificate and domicile; that according to the Family Registration Certificate issued by N.A.D.R.A., the date of birth of the appellant's elder sister is 29.11.1989; that if the appellant's date of birth mentioned in his educational certificates *i.e.,* 27.10.1989 is taken as correct, it is unbelievable that his sister was born only 32 days after the appellant was born; that if the said anomaly is not rectified, it would give rise to complications about distribution of inheritance between the siblings; that the appellant is not a

government employee; that the impugned judgment and decree is against the facts and law; and that along with the instant appeal, the appellant has submitted an application for additional documents seeking permission to produce Family Registration Certificate issued by N.A.D.R.A. on 21.08.2019 and birth certificate issued by the Secretary, Union Council, Chak Dolat Tehsil Gujjar Khan, District Rawalpindi. Learned counsel for the appellant prayed for the instant appeal to be allowed and for the suit to be decreed after setting-aside the impugned judgement and decree dated 02.10.2021. In making his submissions, learned counsel for the appellant placed reliance on the judgment passed by the Hon'ble Supreme Court in the case of Federal Board of Intermediate and Secondary Education, Islamabad Vs. Abeer Masood (2020 SCMR 316).

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

4. The record shows that on 09.09.2020, the appellant instituted a suit for declaration and permanent injunction praying that his correct date of birth is 27.03.1991 instead of 27.10.1989. Furthermore, the appellant prayed for a direction to be issued to the Federal Board of Intermediate and Secondary Education, Islamabad **('F.B.I.S.E.")** to incorporate the appellant's correct date of birth in its record. The F.B.I.S.E. contested the said suit by filing a written statement. Out of the divergent pleadings of the contesting parties, the learned Civil Court framed the following issues:-

> "1. *Whether the correct date of birth of plaintiff is 27.03.1991 instead of 27.10.1989, therefore, plaintiff is entitled to a decree for*

declaration and mandatory injunction as prayed for? OPP

1. ***Whether the suit of plaintiff is neither maintainable nor proceedable in law and same is liable to be dismissed along with special cost? OPD***
2. ***What should the relief be?"***

5. The appellant's attorney Muhammad Idrees appeared as PW.1 and deposed in support of the appellant's claim. The said PW was cross-examined by the F.B.I.S.E. In the documentary evidence, PW.1 submitted special power of attorney as Exh. P1/2, the appellant's Secondary School Certificate result card issued on 27.06.2005 as Exh.P/2 and the appellant's C.N.I.C. issued on 20.03.2012 as Exh.P/3.

6. The F.B.I.S.E. deputed its employee Waheed Ali as its authorized representative before the learned Civil Court who appeared as DW.1 and deposed in support of the written statement. DW.1 produced the appellant's registration card for S.S.C. examination as Exh.D/1, his admission forms for S.S.C. examinations Part I and II as Exhs.D/2 & D/3, respectively, and authority letter issued by the F.B.I.S.E. in favour of DW.1 as Exh.D/4. The learned Trial Court vide impugned judgment and decree dated 02.10.2021 dismissed the appellant's suit. The said judgment and decree dated 02.10.2021 has been assailed by the appellant in the instant appeal.

7. Learned counsel for the appellant could not dispute the fact that the appellant appeared in the matriculation examination in the year 2004-05 and had passed the said examination. On 27.06.2005, the appellant was issued a result card for his matriculation examination which he produced before the learned Civil Court as Exh.P/2. During the cross-examination, PW.1 clearly stated that the appellant came to know in the year 2005 about the

error in his date of birth entered in his S.S.C. result card. Thus, the cause of action accrued to the appellant in the year 2005 and the period of limitation is to be reckoned from the said date for filing a suit for declaration.

8. Now, under Article 120 of the 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 accrues. The appellant instituted the suit on 09.09.2020 *i.e.,* after about fifteen years from the accrual of cause of action. 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 F.B.I.S.E.'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 challenge 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. ..."

9. The F.B.I.S.E., in its evidence produced Exh.D1, which is the appellant's Secondary School Certificate Examination Registration Card for session 2002-2004 wherein his date of birth is mentioned as 27.10.1989. The F.B.I.S.E. also produced in its evidence Exhs.D/2 & D/3 which are the appellant's

admission forms for the Secondary School Certificate (Part-I&II) Examinations. The said forms were submitted on 09.12.2003 and 15.12.2004, respectively. The appellant, his father / guardian as well as head of his academic institution had signed these forms. In both these forms, which were submitted with the break of one year, the appellant's date of birth is stated to be 27.10.1989. These forms also contain an affidavit sworn by the appellant deposing that the particulars in the said form were true and correct.

10. The appellant, during his evidence in support of his claim, produced a single document which is his C.N.I.C. Exh.P/3 issued by N.A.D.R.A. on 20.03.2012 several years after the issuance of the appellant's matriculation result card. PW.1 had categorically admitted during the evidence that the appellant did not produce birth record or record keeper of the Union Council and documents from N.A.D.R.A or school record. This is crucial because along with the instant appeal, the appellant has filed an application for additional documents. Along with the said application copy of N.A.D.R.A. record and birth certificate have been appended. In the application for additional documents, the appellant has not given any reason as to why these documents were not produced before the learned Civil Court. Moreover, both these documents have been issued several years after the issuance of the appellant's matriculation result card. 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 appellant'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 appellant's case which has rightly been noticed by the learned Civil Court.

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

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

13. 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. As regards the case law relied upon by the learned counsel for the appellant, the case of Federal Board of Intermediate and Secondary Education, Islamabad Vs. Abeer Masood *(supra)* is distinguishable inasmuch as the question of limitation was not involved therein and the plaintiff's suit was decreed after she had successfully discharged onus of proof. Furthermore, the concurrent judgments of the Courts below were also in favour of respondent / plaintiff in the said case.

14. In view of above, the instant appeal, being without merits, is dismissed in *limine.*

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*