JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.340/2017
Federal Board of Intermediate and Secondary Education, Islamabad
Versus
Noreen Bibi

Date of Hearing: 23.10.2019
Petitioner by: Mir Afzal Malik, Advocate
Respondent by: Mr. Muhammad Ali Rana, 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 13.07.2017 passed by the Court of the learned District Judge (West), Islamabad, whereby its appeal against the judgment and decree dated 18.02.2017 passed by the Court of the learned Civil Judge, was dismissed. Vide the said judgment and decree dated 18.02.2017, the learned Civil Court decreed the respondent's suit for declaration and rectification of the date of birth in her matriculation certificate.

2. Learned counsel for the petitioner drew the attention of the Court to the respondent's admission form (Exh.D/2) for the Secondary School Examination and submitted that in the said application form, the respondent had entered 11.04.1984 as her date of birth; that respondent was estopped under Article 114 of the *Qanoon-e-Shahadat* Order, 1984 from seeking a change in her date of birth; that the respondent could not take a position contrary to the one taken by her in the said admission form; that the said admission form contained the respondent's affidavit deposing therein that the entries made in the said admission form were correct; that the said admission form had also been signed by the respondent's father/guardian; that the said admission form had also been signed and stamped by the Principal of the respondent's School (F.G. Girls Higher Secondary School Kot Hathial, Islamabad); and that the said admission form was exhibited before the learned Trial Court.

3. Learned counsel for the petitioner further submitted that the respondent's suit was barred under Article 3 of the Limitation Act, 1908; that an undated birth certificate issued by Union Council (Exh.P/2) had been produced by the respondent; that Exh.P/3 issued by N.A.D.R.A. could not have been relied upon as it was issued in the year 1997 which is several years after the respondent's birth; that the respondent did not produce the registrar of births in order to prove that her correct date of birth was 11.04.1989; that no witness was produced from the respondent's college/school in order to testify that the respondent's correct date of birth was not 11.04.1984; 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 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.

4. On the other hand, learned counsel for the respondent submitted that the wrong entry of the respondent's date of birth in the admission form was the result of an inadvertent mistake; that the respondent's correct date of birth (i.e. 11.04.1989) has been correctly recorded in Exh.P/3 issued by N.A.D.R.A.; that the school leaving certificate issued by the respondent's school also mentions 11.04.1989 as her date of birth; 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.

5. I have heard the contentions of the learned counsel for the contesting parties and perused the record with their able assistance.

6. The record shows that on 27.09.2016, the respondent filed a suit for *"declaration and mandatory injunction"* praying for a declaration that her correct date of birth is 11.04.1989 and not 11.04.1984. Furthermore, the respondent prayed for a direction to the petitioner to incorporate the correction/change in the respondent's date of birth in their records. The petitioner contested the said suit by filing a written statement. After the

framing of issues, the respondent tendered in evidence CNIC issued by NADRA (Exh. P/1); birth certificate (Exh.P/2) issued by Secretary, Union Council Bhara Kahu; family registration certificate (Exh. P/3) issued in the year 1997 by the Directorate of Registration Ministry of Interior; school leaving certificate (Exh.P/4) issued by Headmistress, F.G. Girls Primary School Kot Hathial, Naiabadi, Bhara Kahu, Islamabad; and secondary school certificate (Exh. P/5) issued by the petitioner on 14.04.2005. According to Exh.P/2, Exh.P/3 and Exh.P/4, the respondent's date of birth was 11.04.1989 whereas according to Exh.P/5, her date of birth was 11.04.1984.

7. The petitioner, in its evidence, produced Exh.D/1 which is the respondent's Secondary School Certificate Examination registration card for Session 2001-2003 wherein her date of birth is mentioned as 11.04.1984. The petitioner also produced in its evidence Exh.D/2 which is the respondent's admission form for the Secondary School Certificate (Part-II) Examination. The respondent and her father/guardian had signed this form. In this form, the respondent's date of birth is stated to be 11.04.1984. This form also contains an affidavit sworn by the respondent deposing therein that the particulars in the said form were true and correct. This form was also signed and stamped by the Principal of F.G. Girls Higher Secondary School, Kot Hathial (F.A) Islamabad.

8. The learned counsel for the respondent could not dispute the fact that the respondent came to know about the alleged mistaken entry as regards her date of birth in her Matriculation Certificate when it was issued on 14.04.2005. 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 twelve 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 paragrpah 5 of the said judgment, it was held *inter alia* 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 the 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 licence 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 4 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. In addition to above, the respondent did not dispute the authenticity of Exh.D/2. Learned counsel for the respondent submitted that the wrong entry of the respondent's date of birth in her admission form for the Secondary School Certificate Examination was caused by an inadvertent mistake. In the said admission form (Exh.D/2), the respondent's date of birth was

not only filled in figures but in words as well. 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. Since the admission form (Exh.D/2) was an admitted document, it deserved due weight and credence which has not been given to it by the learned Courts below. The learned Courts below misread the evidence by not appreciating that the admission form (Exh.D/2) had not just been signed by the respondent, but also by her father/guardian and the Principal of F.G. Girls Higher Secondary School, Kot Hathial (F.A) Islamabad. 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. 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. 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.

11. 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.

12. 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.

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.

14. 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 produced 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.

15. The reliance by the learned Courts below on the undated birth certificate and family certificate was also erroneous. In the case of Federal Board of Intermediate and Secondary Education Vs Azam Ali Khan (supra), 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.

16. By not requiring the respondent to 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 learned Civil Court went

against the law laid down by this Court. 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 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. ..."***

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."***

17. I am of the view that 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. Therefore, the instant revision petition is allowed; the concurrent judgments and decrees dated 13.07.2017 and 18.02.2017 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 her matriculation certificate is dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan

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