JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.29 of 2017
Federal Board of Intermediate and Secondary Education
Versus.
Muhammad Akabar

Date of Hearing: 28.11.2017
Petitioner by: Mir Afzal Malik, Advocate
Respondent by: Mr. Rehan Seerat, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioner, Federal Board of Intermediate and Secondary Education, impugns the judgment and decree dated 27.10.2016, passed by the Court of the learned District Judge (West), Islamabad, whereby the respondent's appeal against the judgment and decree dated 03.06.2016, passed by the Court of the learned Civil Judge, Islamabad, was allowed, and the respondent's suit for declaration and mandatory injunction was decreed. In the said suit, the respondent had prayed for a declaration to the effect that his date of birth is 11.08.1967, and not 03.10.1965.

2. Learned counsel for the petitioner submitted that judgments of the learned Courts below are at variance; that the judgment and decree dated 03.06.2016, passed by the learned trial Court is based on the correct appreciation of the law; the respondent's date of birth entered in his matriculation certificate is based on the entries made by the respondent in his application form to the Board of Intermediate and Secondary Education; that the respondent claims to have done his matriculation in the year 1980, but the civil suit seeking the correction in his date of birth was filed on 31.07.2015; that the duplicate result card of the respondent's matriculation examination held in the year 1980 was issued to the respondent on 02.05.2007; that the said suit was instituted by the respondent beyond the limitation period of six years required for a suit for declaration; that the respondent's date of birth entered in the said result card is correct; that the documents on which the respondent placed

reliance so as to change his date of birth were issued much after the result card of the respondent's matriculation; and that the birth certificate was issued to the respondent on 21.06.2012, whereas the passport was issued to him on 30.04.2013. Learned counsel for the petitioner prayed for the revision petition to be allowed and for the judgment and decree passed by the learned appellate Court to be set-aside.

3. On the other hand, learned counsel for the respondent submitted that the documents brought on record by the respondent clearly show that he was born on 11.08.1967 and not on 03.10.1965; that in support of his case, the respondent produced his birth certificate, school leaving certificate, Canadian residential card, passport, Canadian health card, Canadian driving license and *nikahnama*, all of which show the respondent's date of birth as 11.08.1967; that the entry of the wrong date of birth in the respondent's result card/matriculation card is the result of an inadvertent error; that when the judgments of the appellate Court and the trial Court are at variance, this Court has to give credence to the judgment of the appellate Court; and that the respondent's suit was not barred by limitation as it was filed within six years of gaining knowledge of the wrong entry of the respondent's date of birth in his matriculation certificate. Learned counsel for the respondent prayed for the writ petition to be dismissed. In making his submissions, learned counsel for the respondent placed reliance on the law laid down in the judgments reported as *2016 YLR 302, 2005 SCMR 1135, and PLD 1988 Lahore 658*.

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 31.07.2015, the respondent filed a suit for declaration and mandatory injunction before the learned civil Court, praying for a change in his date of birth from 03.10.1965 to 11.08.1967 in the result card of his matriculation examination conducted by the petitioner in the year 1980. The petitioner contested the said suit by filing a written statement.

From the divergent pleadings of the parties, the learned civil Court framed the following issues:-

> *"1. Whether the plaintiff is entitled for a decree of declaration and mandatory injunction as prayed for? OPP*
>
> *2. Whether the suit is time barred? OPD*
>
> *3. Whether the plaintiff has got no cause of action to file this suit? OPD*
>
> *4. Whether the plaintiff is stopped by his words and conduct to file the instant suit? OPD*
>
> *5. Whether the plaintiff has not come to the court with clean hands? OPD*
>
> *6. Whether the suit of plaintiff is false and frivolous therefore, it is liable to be dismissed with costs? OPD*
>
> *7. Relief."*

6. The respondent entered the witness box as PW.1. In the statement of the respondent's learned counsel, a number of documents including the respondent's birth certificate, school leaving certificate, Canadian residential card, passport, Canadian health card, Canadian driving license, *nikahnama,* and copy of application for correction of his date of birth were exhibited and marked. All these documents show respondent's date of birth as 11.08.1967.

7. Now the result card of the respondent matriculation examination conducted in the year 1980 was brought on record by the respondent. This is a "duplicate" result card, which was issued to the respondent on 02.05.2007. The respondent's date of birth in the said result card is entered as 03.10.1965. Therefore, it is safe to conclude that the respondent knew about the alleged wrong entry of his date of birth in the said result card ever since 02.05.2007.

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 his date of birth in his result card of his matriculation examination when it was issued on 02.05.2007. 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 on 31.07.2015 (i.e. more than eight years after the issuance of said result card of the

respondent's matriculation examination conducted in the year 1980). 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 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 his 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. ...”***

9. It is 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. Reference in the regard may be made to the case of Mohammad Arshad Vs. Noor Ahmad (2008 SCMR 713), wherein 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.

10. It is my view that the learned civil Court correctly dismissed the respondent’s suit on the ground of limitation. The reasons given by the learned appellate Court for setting aside the judgment and decree of the learned civil Court does not appeal to reason. The respondent's knowledge of the wrong entry of his date of birth in the result card of his matriculation exam would be considered from 02.05.2007. The suit for declaration instituted by the respondent was clearly barred by limitation. It is well settled that a Court is bound to notice and consider the question of limitation, irrespective of the fact whether or not it was agitated by the respondent. The question of limitation could not be waived, and even if waived could be taken up again by a party waiving it, and even by the Court itself. Law to this effect has been laid down in the judgments titled Muhammad Sami Vs. Additional District Judge, Sargodha (2007 SCMR 621), Commissioner of Income Tax Companies Zone-IV, Karachi Vs. Hakim Ali Zardari (2006 SCMR 170), Haji Ghulam Rasul Vs. Government of Punjab through Secretary, Auqaf Department, Lahore (2003 SCMR 1815), and Hakim Muhammad Buta Vs. Habib Ahmad (PLD 1985 SC 153).

11. Since I find that the learned appellate Court has committed a jurisdictional irregularity by not appreciating that the

respondent's suit was barred by time, I am inclined to allow this revision petition. Consequently, the impugned judgment and decree dated 27.10.2016, passed by the learned appellate Court is set-aside, and the judgment and decree dated 03.06.2016, passed by the learned civil Court is restored. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Qamar Khan*

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