

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.6442 of 2021(O&M)
Date of Decision-09.11.2021**

Jyoti Bajaj ... Petitioner
Versus

State of Haryana and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjiv Kumar Aggarwal, Advocate
for the petitioner.

Mr. Vivek Chauhan, Addl., A.G., Haryana
for respondent No.1.

Mr. Jagdish Manchanda, Advocate
for respondents No.2 to 4.

RAJ MOHAN SINGH, J.

CM No.11135-CWP of 2021

Though there is no prayer for placing on record additional documents, but the application is accompanied by Annexures P15 and P16, therefore, additional documents Annexures P15 and P16 are taken on record subject to all just exceptions.

Application stands disposed of.

Main case

[1]. Petitioner seeks issuance of an appropriate writ in the nature of mandamus, directing the respondents to correct the date of birth of the petitioner in the birth certificate from 19.12.1982 to 17.12.1982 being a clerical mistake.

[2]. Petitioner has pleaded that she was born to Smt. Laxmi and Sh. Kali Dass (parents) on 17.12.1982 at CHC Hospital, Pataudi, District Gurugram. Petitioner was admitted in the school with date of birth as 17.12.1982 by her parents. Her date of birth is recorded as 17.12.1982 in her middle standard examination certificate dated 04.12.1995 and matriculation certificate dated 23.06.1997.

[3]. Petitioner completed her M.A., B.Ed in education and thereafter, she was appointed as a teacher in Government School of NCT Delhi. In the service book of the petitioner, her date of birth is recorded as 17.12.1982. She was appointed as TGT Sanskrit teacher in the Directorate of Education (Government of NCT of Delhi) on 23.02.2009. Petitioner was married to Sh. Deepak Bajaj on 15.10.2010. Out of the wedlock, two children took birth namely Pravar Bajaj and Ameya Bajaj.

[4]. Date of birth in the Aadhaar Card, Pan Card, NPS Card and Haryana Family Identification Letter is recorded as 17.12.1982. Even in the passport of the petitioner, her date of birth is recorded as 17.12.1982. In all these documents of identification, date of birth of the petitioner is rightly recorded as 17.12.1982. Petitioner is not disputing her age to be 17.12.1982 on the basis of aforesaid documents, which according to the petitioner, are rightly executed by the competent authorities.

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[5]. Husband of the petitioner is living in USA. As per permanent resident card (Annexure P15), children of the petitioner have already got permanent residentship of USA. When the petitioner applied for green card, USA Embassy has asked for the birth certificate. Petitioner applied for issuance of birth certificate. On seeing the birth certificate, it has been found that date of birth of the petitioner is wrongly recorded as 19.12.1982 instead of 17.12.1982. USA Embassy declined to issue green card to the petitioner owing to the aforesaid discrepancy in her date of birth.

[6]. Thereafter, the petitioner filed representation dated 17.02.2021 to respondents No.2 to 4 for correction in her date of birth. Petitioner does not intend to draw any benefit on the basis of such correction, rather correction sought is only confined to birth entry. In all other documents, date of birth is rightly recorded as 17.12.1982. Petitioner is 38 years of age and intends to go abroad to join her family. Children and husband of the petitioner are in USA. Children are studying in USA. Husband of the petitioner is also employed in USA.

[7]. Learned counsel for the petitioner submitted that entry in the birth register is apparently wrong. The entry was made on 21.12.1982, thereby recording the date of birth as 19.12.1982. One Devki Nurse is shown to have signed the register. The entry was recorded at serial No.200.

[8]. Perusal of the register would show that name of Devki Nurse is mentioned in Hindi as well as her alleged signature as Devki in English, which goes to the column for signature of the Sub Registrar. Last column is meant for signature of Sub Registrar, but it appears that with the spread of name of Devki in English, Sub Registrar has not signed the necessary column, whereas in the preceding entries and subsequent entries of the register, initials of Sub Registrar have existed. The entry itself is against the date of birth appearing in school leaving certificate i.e. middle as well as matriculation, graduation, post-graduation, service record, Aadhaar Card, Pan Card, NPS Card and Haryana Family Identification letter. Petitioner is not disputing her date of birth in the aforesaid documents, rather the petitioner is disputing her date of birth in the birth register, which is shown to have been recorded at the instance of one Devki Nurse. The date of birth is recorded as 19.12.1982. The entry was made on 21.12.1982 i.e. after two days of the alleged birth on 19.12.1982 and the entry appears to be doubtful in view of non-appearance of initials of the Sub Registrar in the column.

[9]. Learned counsel for the petitioner further submitted that there is no dispute about the question of fact. Petitioner is not disputing her date of birth as 17.12.1982 on the basis of voluminous documents attached with the writ petition. For seeking correction in the date of birth by means of Civil Court jurisdiction, these documents would have to be relied. These documents are not

disputed, rather the petitioner herself lays claim on the basis of these documents. Learned counsel referred to ***Ambika Kaul Vs. Central Board of Secondary Education and others, 2015(3) SCT 350*** to contend that even though, Registration of Birth and Deaths Act, 1969 in terms of Section 35 of the Evidence Act gives statutory recognition to the birth certificate, but once date of birth is recorded in the school record with a particular date of birth and once a particular date of birth is disclosed before the school authorities and on the basis of such date of birth, the student completed the education, then the student is estopped to rely upon the birth certificate to seek correction in the school leaving certificate. Para No.22 of the aforesaid judgment reads as under:-

"[22] But In respect of the persons born after the applicability of the Act, the matter requires to be examined from a different angle. The Act gives statutory recognition to the birth certificates. It is a mandatory requirement for all persons in all conceivable situations to report about the birth and death to the Registration Officers. The Central Board of Secondary Education makes it mandatory to produce date of birth certificate issued by the Registrar of Births and Deaths, wherever existed, as proof of date of birth. If a person does not give date of birth certificate issued by the Registrar at the time of admission to a school, he does it at his own peril. Once he has disclosed a particular date of birth, completed education; he is estopped to rely upon the birth certificate issued by the Registrar of Births and Deaths, at a later stage of life. The admission to a School is to be based upon a date given by the candidate, which date continues to be reflected in the

matriculation certificate as well. Therefore, once a candidate has completed his education on the basis of an assumed date, in conflict with the birth certificate issued by the Registrar of Birth and Deaths, he is estopped to rely upon the birth certificate at the later stage of life.”

[10]. Perusal of the aforesaid paragraph would show that the decision in the aforesaid case is on the contrary side, which in fact is the prayer of the petitioner in the present writ petition. Petitioner claims that her date of birth as recorded in the school leaving certificate and other documents be treated to be validly recorded date of birth as against the birth entry. Even if, the Act gives statutory recognition to the birth certificate and the petitioner was admitted in the school on the basis of some oral date of birth submitted by her parents and the petitioner completed her education on the basis of such date of birth, thereafter, the date of birth recorded in the school register shall be taken to be correct date of birth for all intents and purposes and precisely, the petitioner is seeking the said claim in the present writ petition.

[11]. Learned counsel also referred to *Jigya Yadav (Minor) (through guardian/father Hari Singh) Vs. CBSE (Central Board of Secondary Education) and others, 2021(4) ALT 51* to contend that the utility of certificates issued by the Board is not confined to educational purposes anymore. They serve a social purpose today and are often used to cross verify particulars like name and date of birth while applying for other Government identity documents. They

assume immense relevance while applying for various jobs, both public and private. Interestingly, CBSE itself has emphasized importance and authoritative value of these certificates. In view of above, any change effected in the school leaving certificate could be fatal to the student for her/his future prospects and this cannot be brushed aside in the name of administrative exigencies. Social realities have material bearing on identity documents. Various statutory enactments have been made, wherein detailed provisions are made for change of identity. UIDAI allows changes in the Aadhaar Card upon fulfillment of required conditions. Section 31 of the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 provides for changes in the records. The provision permits both demographic and biometric changes. Even though, CBSE certificate is not strictly meant to be considered as identity document, but the same is being relied upon for corroborative purposes in all academic and career related transactions as foundational document. In fact, CBSE has itself propounded that the certificate of CBSE is relied for all official purposes and the date of birth in matriculation certificate, in particular, is a primary evidence of date of birth of a citizen. In the aforesaid cited case, the Court after discussion of legal position, ultimately found that there are no restrictions on the power of CBSE to effect change. Petitioner is not seeking any such change in CBSE record/matriculation certificate and other documents.

[12]. The grievance of the petitioner is that despite consistent entries in all the documents, a wrong entry was made in initial date of birth entry, that too, at the instance of one Devki Nurse, who got recorded the entry on 21.12.1982 in respect of alleged date of birth as 19.12.1982. The entry in itself is found to be doubtful on its perusal.

[13]. Learned counsel for respondents No.2 to 4 relied upon Civil Appeal No.2376 of 2005 (Arising out of SLP(C) No.14324 of 2004) titled Coal India Ltd. and another Vs. Ardhendu Bikash Bhattacharjee and others decided on 04.04.2005, CWP No.13722 of 2007 titled Resham Singh Vs. Union of India and another decided on 06.11.2007 and CWP No.2390 of 1987 titled Lt. Col. D.K. Vaid Vs Union of India decided on 30.08.1993 to contend that birth entry has been found to be presumption of truth and the same is a question of fact. In Coal India Ltd. and another's case (supra), the applicant sought correction in the date of birth from 31.12.1938 to 26.01.1943. Evidently, such claim was towards seeking benefit in service tenure. The Hon'ble Apex Court held that it is a question of fact, which needs to be adjudicated upon by way of leading evidence. In Resham Singh's case (supra), it was held that the certificate issued by the Registrar of Births and Deaths has precedence unless and until it appears to be doubtful or suspicious. Birth certificate is issued by the Registrar of Births and Deaths on the basis of entry extracted from the register maintained by the

Registrar under the ~~WWW.LIVE.LAW.IN~~ Registration of Births and Deaths Act, 1969. It was meant to regulate registration of Births and Deaths and for matters connected therewith. Registrar is appointed for a specified area in terms of Section 7 of the Act with a defined jurisdiction. Registrar has to keep register of Births and Deaths for registration of births and deaths in his area while exercising jurisdiction. The matriculation certificate is a primary evidence of the marks obtained by the candidate in a qualifying examination and the date of birth recorded as an ancillary measure. Primacy would, therefore, have to be accorded to the date of birth reflected in the birth certificate. In **Lt. Col. D.K. Vaid's case (supra)**, the Division Bench of this Court held that the questions of authenticity of the documents involve and relate to questions of fact, which can be decided only after examining and assessing the supporting and corroborative evidence and such exercise can only be done before the Civil Court.

[14]. Instant case is a peculiar case based on its own facts. Middle school certificate, matriculation certificate, entries in the service record of the petitioner in respect of date of birth, Pan Card, Aadhaar Card, NPS Card and Haryana Family Identification Letter would show that the date of birth as 17.12.1982 is claimed to be true date of birth of the petitioner. Even if, a civil suit is to be filed, the aforesaid documents would be the supportive and corroborative evidence in favour of the petitioner, on which the petitioner would lay emphasize in evidence. These documents have been pleaded in

the writ petition with reference to annexures. Petitioner has specifically pleaded that her husband and children are in USA and she requires green card in order to join her family. Petitioner has also specifically pleaded that she is not drawing any benefit out of such typographical change in the date of birth, rather she is claiming two days advancement in the date of birth and she would not be benefitted and is not taking benefit anywhere of correction in her date of birth from 19.12.1982 to 17.12.1982 because in every document 17.12.1982 is the date of birth shown. Ratio laid down in **Ambika Kaul's case (supra)** in terms of para No.22 would make the petitioner entitled as she is not assailing the entry in the school leaving certificate, rather the petitioner endorses the same analogy and also submits that in view of ratio laid down **in Jigya Yadav's case (supra)**, the date of birth in matriculation certificate is a primary evidence of date of birth of a citizen. The information contained in CBSE certificate is admissible. The present case has distinguishing feature from the precedents cited by learned counsel for respondents No.2 to 4. In the written statement, documents pleaded by the petitioner have been evasively denied without any reference to a lawful criteria of inadmissibility of these documents. In fact no case law is applicable as the present case is a peculiar case of its own type.

[15]. Petitioner having completed her studies and completed her service avenues, now seeks to join her family in USA on the

basis of correct date of birth as 17.12.1982. It is due to some typographical error in the birth register based on the information furnished by one Devki Nurse on 21.12.1982, the entry has been made in respect of alleged date of birth as 19.12.1982, that too, under the solitary signature of Devki Nurse without counter signature of the Sub Registrar. As per ratio laid down in Resham Singh's case (supra), the entry has to be viewed as doubtful and suspicious.

[16]. For the reasons recorded hereinabove, I deem it appropriate to accept this writ petition. The present writ petition is accordingly allowed. Respondent No.4 is directed to carry out necessary correction in the birth certificate of the petitioner and thereafter, do the needful in the context of supplying the same to the petitioner in accordance with law. Since the present case is a unique case of its own type and is not covered by the precedents on the subject matter, therefore, it cannot be cited as a precedent in other cases unless and until facts squarely fit in the frame of things.

**(RAJ MOHAN SINGH)
JUDGE**

09.11.2021

Prince

Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**