

AFR

Court No. - 17

Case :- WRIT - C No. - 16056 of 2021

Petitioner :- Rashmi Srivastava

Respondent :- State Of U.P. Thru. Prin. Secy. Secondary Education
Lko.Andors

Counsel for Petitioner :- Amrendra Nath Tripathi, Yogeshwar Sharan
Srivasta

Counsel for Respondent :- C.S.C., Akhilesh Kumar Srivastava,
Gyanendra Kr Srivastava, Prashant Kumar Tripathi

Hon'ble Pankaj Bhatia, J.

Heard Sri Yogeshwar Sharan Srivastava, the counsel for the petitioner, Sri Saharsh Srivastava, the counsel for the respondents 1 and 2, Sri Akhilesh Kumar Srivastava the counsel fro the respondent no.3 and Sri Gyanendra Kumar Srivastava, the counsel for the respondent no.4.

The present petition has been filed challenging the order dated 11.04.2019 (Annexure 1) as well as the order dated 22.03.2022 passed by the respondent no.2, as contained in Annexure no.15.

The facts in brief giving rise to the petition are as under :

The petitioner whose name as recorded in the educational records is Rajni Shrivastava and she wanted to change her name to Rashmi Srivastava and, as such, took steps for getting the same intent published in the newspapers. The publication was carried out in the newspaper 'Dainik Jagran' and 'Hindustan Times' as well as in the Gazette of India. In pursuance to the said publications, the petitioner desirous of changing the name in the school records, moved an application. In the High School Examination, the name of the petitioner was recorded as Rajni Shrivastava, she took the examination in the year 2009 and thereafter completed her intermediate examination in the year 2011. Thereafter the petitioner pursued her graduations studies

and she qualified in the year 2015 with the same name i.e. Rajni Srivastava. The petitioner also claims to have got herself registered with the Council for the Nursing and Midwives, U.P. and was also issued a certificate and identity card with the name Rajni Srivastava.

After getting the publication done, with an intent to change her name from Rajni Shrivastava to Rashmi Srivastava, the petitioner moved an appropriate application to Aadhar authorities and in terms of the said application, the name was changed from Rajni Shrivastava to Rashmi Srivastava in Aadhar Card and subsequently on her moving an application, the name was changed in the Permanent Account Number (PAN) issued by the Ministry of Finance. As there arose a discrepancy in the Aadhar Card, PAN Card and the Bank Account on one hand as contrasted with the High School Certificate, the Intermediate Certificate and the Graduation Certificate where the name of the petitioner was recorded as Rajni Shrivastava, the petitioner preferred a writ petition before this Court being a Writ Petition No.2219 of 2019 (MS). The said writ petition was disposed off on 25.01.2019 permitting the petitioner to move an appropriate application with directions to the respondents to pass a reasoned order in the said application. The application of the petitioner was rejected vide order dated 11.04.2019 (Annexure 1) mainly on the ground that in terms of the mandate of the provisions as contained in the Regulations under Chapter III Regulation 7 of the Regulations framed under the Intermediate Education Act 1921 that the said request was beyond the prescribed limitation under the said Regulations. The similar representation of the petitioner before the University authorities and the other authorities were rejected on the ground that unless the correction as desired by the petitioner is made in the High School records, no consequent action can

be taken.

When again the petitioner approached this Court by filing the present petition, this Court by means of an interim order dated 30.07.2021 directed the authorities to reconsider the grievance of the petitioner in the light of the judgment of this Court in the case of **Anand Singh vs. U.P. Board of Secondary Education and others (2014) 3 ADJ 443 (DB) and in the case of Kabir Jaiswal vs. Union of India and others; AIR 2021 All 96**. On the basis of the said order, the petitioner once again approached the respondent authorities and by means of the subsequent order, the request has been rejected once again on 22.03.2022. An amendment application was filed seeking to challenge the subsequent order dated 22.03.2022.

The counsel for the petitioner argues that right to change the name has been held is a facet of fundamental right as guaranteed under Article 19(1)(a) of the Constitution of India, as such, he argues that the respondents could not have denied the claim of the petitioner. He further argues that the ground of limitation as taken by the respondents while passing the impugned order is wholly unjustified. He draws my attention to the judgment of this Court in the case of **Anand Singh vs. State of U.P. (supra)** wherein this court while interpreting the Regulation 7 of Chapter III came to the conclusion and recorded as under :-

"The substantive part of Regulation 7 provides for the correction of such entries in the certificate which have arisen because of any inadvertent clerical mistake or omission in the records of the Board or the Institution last attended by the candidate. It also provides that for this purpose, the candidate has to submit an application within three years of the date of issue of the certificate. However, under the proviso, any spelling mistake occurring in the name of the applicant or in the name of the applicant's father/mother in the certificate can be corrected when an application is filed for this purpose. The nature of the error which is contemplated in the substantive

part of Regulation 7 is not the same as contemplated in its proviso nor is any time limit set out in the proviso.

It would be useful to examine the particulars of the candidate that are contained in a certificate issued by the Board. They include the year of the examination, the name of the candidate, the names of the parents, date of birth, subjects opted, division obtained, name of the School/Centre, certificate number, appearance as a regular/private candidate and the date of issue of the certificate. Of these, the date of birth, the subjects opted, the year of examination and the division obtained by the candidate are particulars which have an important bearing when admission to higher classes or employment is sought by the candidate. While making any correction in the entries relating to these matters, the requirement of moving the application within three years has to be adhered to as any correction in regard to these entries would have an impact on the rights of other candidates when they seek admission to higher classes or employment. However, the other particulars contained in the certificate, like the name of the candidate or the names of the parents of the candidate are not that relevant and any correction made in regard to these particulars would have no impact on the admission or employment of other candidates. When so considered, we feel persuaded to hold that the time limit of three years prescribed in the substantive part of Regulation 7 for submission of an application for making correction in the certificate issued by the Board in regard to the name of the candidate or the names of the parents of the candidate should not be insisted upon, particularly when the Board itself has considered it appropriate to have no time limit under the proviso for making correction in regard to any spelling mistake in the name of the candidate or his parents. The applicant must, however, explain to the Board the reasons on the basis of which the application could not be submitted earlier and if it is found that the claim is bona fide and is otherwise justified, there is no reason to reject the application, as in the present case, merely on the ground of delay. Undoubtedly, the Board has to examine whether any genuine ground has been made out for correcting the name and it would be open to the Board to consider all the relevant materials pertaining to the request for correction of the name. "

He has further drawn my attention to the judgment of the Apex Court in the case of **Jigya Yadav (Minor) vs. CBSE and others [Civil Appeal No.3905 of 2011 decided on 03.06.2021]** wherein the Apex Court considered the various judgments of the various High Courts and recorded as under :

"171. As regards request for "change" of particulars in the certificate issued by the CBSE, it presupposes that the particulars intended to be recorded in the CBSE certificate are not consistent with the school records. Such a request could be made in two different situations. The first is on the basis of public documents like Birth Certificate, Aadhaar Card/Election Card, etc. and to incorporate change in the CBSE certificate consistent therewith. The second possibility is when the request for change is due to the acquired name by choice at a later point of time. That change need not be backed by public documents pertaining to the candidate.

(a) Reverting to the first category, as noted earlier, there is a legal presumption in relation to the public documents as envisaged in the 1872 Act. Such public documents, therefore, cannot be ignored by the CBSE. Taking note of those documents, the CBSE may entertain the request for recording change in the certificate issued by it. This, however, need not be unconditional, but subject to certain reasonable conditions to be fulfilled by the applicant as may be prescribed by the CBSE, such as, of furnishing sworn affidavit containing declaration and to indemnify the CBSE and upon payment of prescribed fees in lieu of administrative expenses. The CBSE may also insist for issuing Public Notice and publication in the Official Gazette before recording the change in the fresh certificate to be issued by it upon surrender/return of the original certificate (or duplicate original certificate, as the case may be) by the applicant. The fresh certificate may contain disclaimer and caption/annotation against the original entry (except in respect of change of name effected in exercise of right to be forgotten) indicating the date on which change has been recorded and the basis thereof. In other words, the fresh certificate may retain original particulars while recording the change along with caption/annotation referred to above (except in respect of change of name effected in exercise of right to be forgotten).

(b) However, in the latter situation where the change is to be effected on the basis of new acquired name without any supporting school record or public document, that request may be entertained upon insisting for prior permission/declaration by a Court of law in that regard and publication in the Official Gazette including surrender/return of original certificate (or duplicate original certificate, as the case may be) issued by CBSE and upon payment of prescribed fees. The fresh certificate as in other situations referred to above, retain the original entry (except in respect of change of name effected in exercise of right to be forgotten) and to insert caption/annotation indicating the date on which it has been recorded and other details including disclaimer of CBSE. This

is so because the CBSE is not required to adjudicate nor has the mechanism to verify the correctness of the claim of the applicant.

172. In light of the above, in exercise of our plenary jurisdiction, we direct the CBSE to process the applications for correction or change, as the case may be, in the certificate issued by it in the respective cases under consideration. Even other pending applications and future applications for such request be processed on the same lines and in particular the conclusion and directions recorded hitherto in paragraphs 170 and 171, as may be applicable, until amendment of relevant Byelaws. Additionally, the CBSE shall take immediate steps to amend its relevant Byelaws so as to incorporate the stated mechanism for recording correction or change, as the case may be, in the certificates already issued or to be issued by it."

In the light of the judgment in the cases of **Kabir Jaiswal and Jigya Yadav (supra)**, it is now clearly well settled that right to change the name is a facet of fundamental right as guaranteed under Article 19(1) (a) of the Constitution of India and cannot be denied. The said right can be exercised in the manner prescribed in the directions as contained in paragraph 171 and 172 of the judgment of **Jigya Yadav (supra)**, as recorded above.

In the present case, the foundation based upon which the impugned orders have been passed namely that the request was made beyond the limitation prescribed under Regulation 7 is wholly untenable and the same militates against the law laid down by this Court in the case of **Anand Singh vs. U.P. Board of Secondary Education (supra)**.

In view of the law as laid down and discussed above, the stand taken by the respondents denying the petitioner's right to change her name clearly violates her rights guaranteed under Article 19(1)(a) of the Constitution of India and not sustainable and is liable to be set aside. Thus, the orders dated 11.04.2019 (Annexure 1) and the order dated 22.03.2022 (Annexure 15) are set aside. The petitioner is directed to move an appropriate

application afresh along with a copy of this order and the documents including the Aadhar Card and the PAN Card before the respondent no.2 along with the original certificate and mark-sheet. On receiving such application, the respondent no.2 is directed to carry out the desired change of name in the mark-sheet and Certificate. However, it is clarified that in the fresh certificate and mark-sheet issued to the petitioner, it would contain the name 'Rashmi Srivastava alias/nee, Rajni Shrivastava'. The said exercise shall be completed by the respondent no.2 within six weeks from the date of filing of the application. The petitioner shall thereupon be entitled to file the application before the respondents no.3 and 4 along with original records who shall also make the necessary corrections in the educational certificates/records issued to the petitioner in the light of the said fresh certificate issued to the respondent no.2. It is further directed that the respondent no.2 shall carry out the necessary corrections in the intermediate examination records of the petitioner also which shall be in consonance with the name change, as recorded in the High School Certificate in terms of the directions given above.

With the aforesaid observations, the writ petition stands **disposed off**.

Order Date :- 18.7.2022

VNP/-