



GAHC010259172023



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WP(C) No.6681 of 2023

Ayan Akhter Laskar,
Son of Faizur Rahman Laskar,
Village: Nimaichandpur Part-II, PO:
Nimaichandpur, PS: Lala, District:
Hailakandi, Assam.

.....Petitioner

-Versus-

1. The Secretary, Board of Secondary Education, Assam (SEBA), Bamunimaidam, Guwahati – 781021.
2. The Controller of Examinations, Board of Secondary Education, Assam (SEBA), Bamunimaidam, Guwahati – 781021.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Mr. A.M. Barbhuiya, Advocate.

For the Respondents : Mr. T.C. Chutia, Standing Counsel,
Board of Secondary Education, Assam.

Date of Judgment : 11th January, 2024.



JUDGMENT & ORDER (ORAL)

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner. Also heard Mr. T.C. Chutia, learned standing counsel, SEBA, representing both the respondents.

2. The petitioner, who was born on 01.01.2002 with the name "Abjal Hussain Laskar", had, on attaining the age of majority, decided to change his birth name and assume the name "Aayan Akhter Laskar". The petitioner accordingly took steps for swearing an affidavit and thereafter published a notice in the daily newspaper "Assam Tribune" declaring that he had changed his name from "Abjal Hussain Laskar" to "Aayan Akhter Laskar". The petitioner thereafter got the change effected in his name notified in the Gazette of India dated 29.11.2022.

It is projected by the petitioner that in the public documents, like his Birth Certificate, Voter Identity Card, Marksheet of his B. Tech. examination, Aadhaar Card, Pan Card, etc., he had got changed his name recorded earlier and in all the above documents, his name now has been recorded as "Aayan Akhter Laskar".

3. The petitioner to maintain parity with the name recorded in the above noted public documents and in his HSLC Examination records, approached the Board of Secondary Education, Assam (for short, "Board") praying for change of his name as "Aayan Akhter Laskar" from "Abjal Hussain Laskar". The said application as preferred by the petitioner not being disposed of by the authorities,



he made an enquiry and then the petitioner was informed that the same has not been favourably considered by the Board and accordingly, the present writ petition has been instituted by the petitioner.

4. The Board has filed an affidavit in the matter and therein had disputed the claim of the petitioner. It is the stand of the Board in the affidavit that the Regulations holding the field do not permit change of the name of a candidate, who had appeared in the HSLC Examinations from the Board after a period of 3(three) years from the date of commencement of the concerned examination. The application, as submitted by the petitioner, being so submitted beyond the period prescribed in the provisions of Regulation 8(b) of the Regulation of Examination of the Board, 2016 (for short, "2016 Regulation") was not favourably considered. The said Regulation being relevant is quoted herein below:-

"8. CORRECTION OF DATE OF BIRTH, NAME, TITLE, ETC:

(b) Correction of Name and Title:

- (i) *If the mistake creeps in recording the name, title etc. in the office of the Board, the correction shall be made on receipt of an application through the Head of the Institution from which the candidate appears at the examination. Such application should be recommended by the Head of the Institution and relevant documents such as Admit card, Marksheet, Certificate, if issued already, should be furnished along with the application for recording the correction.*
- (ii) *If the mistake (spelling only) occurs due to wrong report of the Head of the Institution the application should be made within two months from the date of publication of results in the same procedure as in (b)(i) above.*



(iii) *When the title is changed due to marriage, the Regular female candidates will submit their applications through the Head of the Institution from which they appeared at the Examination with the attestation by their respective husband.*

All such corrections except those in para (b) (ii) above, will be admissible if the applications are made within 3 years from the date of commencement of the concerned Examination with necessary fees.”

5. It has been submitted by Mr. Barbhuiya, learned counsel for the petitioner that in the event the matriculation records of the petitioner maintained in the Board is not changed, he would be subjected to great prejudice as there would arise a doubt with regard to his identity inasmuch as in other public documents, like Birth Certificate, Voter Identity Card, Mark-sheet of his B. Tech. examination, Aadhaar Card, Pan Card, etc., his name has been recorded as “Aayan Akhter Laskar” but in his matriculation records, the same continues to be recorded as “Abjal Hussain Laskar”. It is submitted by the learned counsel for the petitioner that the petitioner would be required to place reliance on the Board records inasmuch as the date of birth as recorded therein would have a value in future inasmuch as wherever a question would arise as to the date of birth of the petitioner, the same is to be satisfied by relying on the Certificates and Admit Card pertaining to his HSLC Examination and in such a situation, there would arise a dispute inasmuch as the authority concerned would be now faced with 2(two) names of the petitioner and as such, the petitioner may be subjected to unwarranted harassment.



Mr. Barbhuiya, in support of his contentions, has placed reliance on a decision of the Hon'ble Apex Court in the case of ***Jigya Yadav -Vs- Central Board of Secondary Education & Ors.***, reported in ***(2021) 7 SCC 535***.

6. Mr. Chutia, learned standing counsel appearing for the Board submits that the change, as sought to be made by the petitioner with regard to his name recorded in the HSLC records in addition to being not covered by the provisions of Regulation 8(b) of the 2016 Regulation, is further not entertainable on account of the fact that there is no declaration of the Court of law permitting the said change.

7. I have considered the submissions advanced by the learned counsel appearing for the parties and have also perused the materials available on record.

8. The materials, as brought on record by the writ petitioner indicates that his name has already been changed in his public documents, like his Birth Certificate, Voter Identity Card, Mark-sheet of his B. Tech. examination, Aadhaar Card, Pan Card, etc., however, his name continues to be recorded as "Abjal Hussain Laskar" in his HSLC records. It is also projected by the petitioner that the change in his Higher Secondary Certificates is also pending and the concerned Council has opined that such change can be permitted only if the Board changes the name of the petitioner in his HSLC records.



9. The matter pertaining to change of the name of a person continuing since his birth, after attaining majority was examined by the Hon'ble Apex Court in the case of **Jigya Yadav** (supra). The Hon'ble Apex Court, upon examining the bye laws of the Central Board of Secondary Education and the judgments available in the matter, had concluded as follows:-

“Conclusion and directions to CBSE

192. *Although we have discussed the broad issues canvassed before us, in the ultimate analysis the real dispute requiring resolution is about the nature of correction or change, as the case may be, permissible to be carried by the CBSE at the instance of the student including past student. As noted earlier, broadly, two situations would arise.*

193. *The first is where the incumbent wants “**correction**” in the certificate issued by the CBSE to be made consistent with the particulars mentioned in the school records.*

193.1. *As we have held, there is no reason for the CBSE to turn down such request or attach any precondition except reasonable period of limitation and keeping in mind the period for which the CBSE has to maintain its record under the extant regulations. While doing so, it can certainly insist for compliance of other conditions by the incumbent, such as, to file sworn affidavit making necessary declaration and to indemnify the CBSE from any claim against it by third party because of such correction. The CBSE would be justified in insisting for surrender/return of the original certificate (or duplicate original certificate, as the case may be) issued by it for replacing it with the fresh certificate to be issued after carrying out necessary corrections with caption/annotation against the changes carried out and the date of such correction. It may retain the original entries as it is except in respect of correction of name effected in exercise of right to be forgotten. The fresh certificate may also contain disclaimer that the CBSE cannot be held responsible for the genuineness of the school records produced by the incumbent in support of the request to record correction in the original CBSE certificate. The CBSE*



can also insist for reasonable prescribed fees to be paid by the incumbent in lieu of administrative expenses for issuing fresh certificate.

193.2. At the same time, the CBSE cannot impose precondition of applying for correction consistent with the school records only before publication of results. Such a condition, as we have held, would be unreasonable and excessive. We repeat that if the application for recording correction is based on the school records as it obtained at the time of publication of results and issue of certificate by the CBSE, it will be open to CBSE to provide for reasonable limitation period within which the application for recording correction in certificate issued by it may be entertained by it. However, if the request for recording change is based on changed school records post the publication of results and issue of certificate by the CBSE, the candidate would be entitled to apply for recording such a change within the reasonable limitation period prescribed by the CBSE. In this situation, the candidate cannot claim that she had no knowledge about the change recorded in the school records because such a change would occur obviously at her instance. If she makes such application for correction of the school records, she is expected to apply to the CBSE immediately after the school records are modified and which ought to be done within a reasonable time.

193.3. Indeed, it would be open to the CBSE to reject the application in the event the period for preservation of official records under the extant regulations had expired and no record of the candidate concerned is traceable or can be reconstructed. In the case of subsequent amendment of school records, that may occur due to different reasons including because of choice exercised by the candidate regarding change of name. To put it differently, request for recording of correction in the certificate issued by the CBSE to bring it in line with the school records of the incumbent need not be limited to application made prior to publication of examination results of the CBSE.

194. 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.

194.1. 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).

194.2. 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.

195. 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 paras 193 and 194, as may be applicable, until amendment of relevant bye-laws. Additionally, the CBSE shall take immediate steps to amend its relevant bye-laws 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.

196. Accordingly, we dispose of the cases before us with directions to the CBSE as noted in paras 193 to 195 above. No order as to costs.”

10. The Hon'ble Apex Court, for arriving at the said conclusions, had examined as to whether the change can be permitted basing on public documents, like Birth Certificate, Official Gazette, Aadhaar Card, Election Card, etc., and had concluded that the said documents enjoy legal presumption of its correctness in terms of the explicit provisions contained in Chapter V of the Indian Evidence Act, 1872. The 1872 Act extends such presumption in terms of Section 76 read with Sections 79 and 80 of the 1872 Act to such public documents and as in the case of an Official Gazette under Section 81 of the same Act.

11. The Hon'ble Apex Court in Paragraph 194 of the decision in ***Jigyada Yadav*** (supra) had laid down that in the event the change is sought for basing on public documents, there being a legal presumption in relation to such public documents as envisaged in the 1872 Act, the same cannot



be ignored by the CBSE in that case. It was further provided that the CBSE may entertain the request for recording change in the certificate issued by it basing on the public documents, however, such action need not be unconditional, but subject to certain reasonable conditions to be fulfilled by the applicant which again may be prescribed by the CBSE. It was further provided that before effecting the change and issuance of fresh certificate incorporating such change, the Board may require the applicant to surrender/return the original certificate.

12. Applying the said ratio of the judgment in **Jigyaa Yadav** (supra) to the issues of the present case, it is seen that the Board had not considered the matter of the petitioner in its proper perspective. As already noticed hereinabove, the petitioner had changed his name in the public documents held to be relevant by the Hon'ble Apex Court in the case of **Jigyaa Yadav** (supra) and his name now stands recorded as "Aayan Akhter Laskar" and in addition to the same, the changed name of the petitioner was also published in the Gazette of India in its publication of October, 29 – November, 04, 2022.

13. Accordingly, the change of name of the petitioner being backed by such change effected in the public documents, this writ petition stands disposed of directing the Secretary, Board of Secondary Education, Assam to now consider the case of the petitioner for change of his name in his HSLC records from "Abjal Hussain Laskar" to



“Aayan Akhter Laskar” and for the said purpose, require the petitioner to swear an affidavit containing a declaration to the above effect and also indemnifying the Board of Secondary Education from any future legal action that may arise on account of such change of name effected in the case of the petitioner. The petitioner is also required to pay the prescribed fee/fee that may be now claimed by the Board along with return of the original certificates earlier issued, and on completion of the said requisites, the Board shall issue a fresh Certificate strictly in terms of the procedure as prescribed by the Hon’ble Apex Court in Paragraph 194(i) of the decision in the case of **Jigya Yadav** (supra). The Board shall issue the fresh Certificate in terms of the above within a period of 1(one) month from the date the petitioner fulfills the requirements required to be done by him, in terms of the directions contained herein above.

14. With the above observations and directions, the writ petition stands disposed of. There would be no order as to costs.

J U D G E

Comparing Assistant