

**(2011) 05 AHC CK 0318**

**Allahabad High Court**

**Case No:** Writ Petition No. 5644 (MS) of 2010

Sharad Kumar Bind

APPELLANT

Vs

Secretary Madhyamik Shiksha  
Parishad and Another

RESPONDENT

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**Date of Decision:** May 16, 2011

**Citation:** (2011) 5 ADJ 764

**Hon'ble Judges:** Rajiv Sharma, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

Rajiv Sharma. J.

1. Heard Counsel for the Petitioner and the State Counsel.

2. By means of this writ petition, the Petitioner has assailed the order dated 5.2.2008, whereby the opposite parties have refused the correction of father's name in the Mark-sheets.

3. Petitioner-Sharad Kumar Bind son of Ram Murti Bind appeared in the High School Examination-2002 conducted by the Board with Roll No. 2336609 from Rajkiya Higher Secondary School, Shekhupur, Pratapgarh. Similarly, the Petitioner appears in Intermediate Examination-2004 conducted by the Board with Roll No. 498853 from S.K. Dubey Intermediate College, Pratapgarh. When the Petitioner and father realized the mistake occurring in the mark-sheet, as advised, he filed a declaratory suit No. 693 of 2003 in the Court of Civil Judge (Junior Division), Sadar. The Civil Court ultimately passed a decree in favour of the Petitioner vide judgment dated 24.11.2006 declaring the Petitioner as son of Shri Ram Murti Bind.

4. After the aforesaid decree, the Petitioner moved an application for correction of name of his father in original mark-sheets but the opposite parties did not pay any heed and as such the Petitioner filed a writ petition No. 5716(MS) of 2007 before this

Court, which was disposed of vide judgment and order dated 30.10.2007 with the direction that the Secretary, Madhyamik Shiksha Parishad shall decide the Petitioner's application within two months. The Opposite party No. 1 in compliance of the aforesaid judgment of this Court, considered the representation of the Petitioner and rejected the same on 5.2.2008.

5. It is in this background that the Petitioner has filed the instant writ petition.

6. Counsel for the Petitioner has argued that the Board has rejected the correction without taking into consideration the decree granted by the Civil Court, which has attained the finality as it remained unchallenged. The judicial verdict shall prevail over the other record and as such the denial of correction is wholly erroneous and shows the non-application of the mind. The authorities are bound to follow the judicial verdict and it is not open for the authorities to act contrary to the verdict. The correction of father's name in the mark-sheet is very trivial in nature and ought not have been refused as it would have adverse affect upon the Petitioner in his entire life.

7. Standing Counsel states that there is no defect in the impugned order as the same has been passed after taking into consideration the entire materials on record. He further submitted that in case of any mistake in marksheet or certificate, there is a provision under Regulation 7 of the Chapter III framed under Intermediate Education Act, 1921 for getting the said mistake corrected by moving proper application within two years from the date of issuance of the same. Neither the Petitioner nor the Principal within the stipulated time moved any application for getting the mistake, therefore, the same was not accepted by the Respondents.

8. It is not disputed that the Petitioner passed High School Examination in the year 2002 with Roll No. 2336609 as private student from Rajkiya Higher Secondary School, Shekhpur, Pratapgarh and was declared successful with II Ird Division. Thereafter the Petitioner passed Intermediate Examination in the year 2004 with Roll No. 498853 as Regular Student in IInd Division from S.K. Dubey Inter College Naudera Pratapgarh.

9. It is an undisputed fact that the Petitioner appeared in the High School Examination in the year 2002 and when in the mark-sheet, he saw that there is a mistake in father's name, as advised, instead of preferring the representation to the Board, he filed a declaratory suit in the year 2003. Before the declaratory suit could be decided, the examination of Intermediate-2004 also commenced and Petitioner's father name remained as was mentioned in the High School mark-sheet. Thus the matter with regard to correct name of father of the Petitioner was pending in the court. The Petitioner immediately after passing of decree in his favour, applied for correction of name. Therefore, it cannot be said that there was deliberate delay in making the application or the Petitioner remained in deep slumber but on the contrary he was quite vigilant. If two years are calculated from the date of passing of

Intermediate Examination, then there would be a very short delay and was very well condonable in the facts and circumstances of the case.

10. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

11. It would be useful to mention that In Salem Advocates Bar Association v. Union of India 2003 (23) LCD SC 1250 the Hon"ble Supreme Court has held as under:

The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are hand maid of justice and not its mistress.

12. From the facts disclosed above, it can be safely inferred that the Petitioner filed the declaratory suit as per advice given to him. Therefore, the Petitioner cannot be made to suffer on account of wrong advice, which resulted in approaching the Petitioner to an incorrect forum.

13. It is worth mentioning that while deciding the representation of the Petitioner, the opposite parties did not take into account the judicial pronouncement of the point involved, a mention of which also finds place in the order dated 30.10.2007 observed by this Court in Writ Petition No. 5716 of 2007 (MS) and on this ground, the order disposing the representation cannot be sustained. Furthermore, the Respondents also erred in not taking the humanitarian ground and in not calculating the period of two years from the date of passing of Intermediate Examination-2004 including the vital fact that when the Petitioner was appearing in 2004 Board Examination, his declaratory suit was pending in the competent court.

14. In view of the above discussions, the impugned order dated 5.2.2008 suffers from infirmities and has not been passed with full application of mind. Accordingly, it is set-aside. The opposite parties are directed to re-consider the application a fresh in light of the observations made hereinabove and the declaratory decree dated 24.11.2006 passed by the Civil Judge (Junior Division), Pratapgarh within a period of three months.

15. The writ petition is allowed, in above terms.