

(2014) 05 MP CK 0007

Madhya Pradesh High Court

Case No: W.A. No. 54/2014

Upasana Bai

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision: May 15, 2014

Hon'ble Judges: S.K. Gangele, J; B.D. Rathi, J

Bench: Division Bench

Advocate: R.B.S. Tomar, Advocate for the Appellant; Raghvendra Dixit, Govt. Advocate, Advocate for the Respondent

Final Decision: Allowed

Judgement

1. This appeal has been filed by the appellant against the order dt. 15.1.2014 passed in W.P. No. 4400/2013.
2. Looking to the subject of the appeal, the appeal is heard finally with the consent of the parties.
3. The appellant was admitted in Govt. Primary School Jhonkri, Block Bhitarwar, District Gwalior on 3.8.2008 in Class I. At that time, date of birth of the appellant was recorded as 15.2.1992 in the admission register of the school. She appeared in Class V examination. A mark sheet/certificate of Class V was issued to the appellant. In the aforesaid certificate, date of birth of the appellant was mentioned as 15.2.1995. She submitted an application to the District Education Officer for change of her date of birth in place of 15.2.1995 to 15.2.1992, that application was rejected. Then she filed a petition before the writ court. Writ Court dismissed the petition on the ground that the petitioner did not file application for correction of date of birth within time in accordance with the rules named as Madhya Pradesh Janma Tithi (Pathshala Ke Register Me Pravishti) Niyam 1973 (hereinafter referred to the Rules of 1973.

4. The respondents in the return resisted the claim of the appellant in regard to correction of date of birth on the ground that as per Rule 9 of the Rules of 1973, the application could be filed up to the date of leaving of the school, however, the appellant filed the application for correction of date of birth belatedly after leaving the school.

5. As per the record produced by the appellant, which was not denied by the respondents, in the register of the school at the time of admission of the appellant in Class I, her date of birth was mentioned as 15.2.1992. Headmaster of the Primary School Jhonkri, Block Bhitarwar, Gwalior also issued the certificate mentioning the fact that the date of birth of the appellant was 15.2.1992. A noting was also mentioned in her application to the effect that it was not possible to get admission at the age of 3 and 1/2 years in Class I if the date of birth of the appellant be treated as 5.2.1995.

6. Rule 7 of the Rules of 1973 reads as under :-

7. From the perusal of the Rules of 1973, it is clear that that the application for correction in the date of birth could be entertained up to the date of leaving of the school. In the present case, the appellant did not file any application for correction in the date of birth. Appellant simply submitted that her date of birth was wrongly recorded in the mark sheet of Class V examination without any record.

8. The respondents did not produce any evidence in the return that on what basis the date of birth of the appellant was recorded as 15.2.1995 in the certificate of Class V, however, her date of birth in the admission register of Class I of school was recorded as 15.2.1992. Same was also certified by the Headmaster of the school. It is also a fact that the appellant was admitted in Class I of the school in the year 1998. If her date of birth mentioned in the Class I mark sheet as 15.2.1995 was accepted, then she was about 3 years of age at the time of admission and she could not have been admitted in the school in Class I being below five years of age. Hence, recording of date of birth of the appellant in the certificate of Class V (Annexure P/2) as 15.2.1995 and rejection of the application is contrary to rules of 1973.

9. Consequently, the appeal is allowed. Impugned order dt. 15.1.2014 passed by the writ court is hereby quashed. Respondents are directed to issue a fresh certificate of Class V examination of the appellant mentioning her date of birth as 15.2.1992. The order be complied with within a period of six weeks from the date of receipt of copy of the order.

10. No order as to costs.