

**COURT OF THE SPECIAL MOBILE MAGISTRATE PT&E
AT SRINAGAR

CNR:	JKSG02-004643-2022
Case No:	65/2022
Date of Institution:	29.09.2022
Date of Order:	24.12.2024

In the case of: -

Hammad Ullah
S/o Javid Ahmad Tantray
R/o Kanitar Naseem Bagh, Srinagar

...Plaintiff

Through: Adv. M/s Iqra Amin Waida & Associates

VERSUS

1. UT of J&K through Commissioner Secretary Education
2. J and K BOSE through Chairperson
3. R.P School Alamdar Colony Malla Bagh, Srinagar

...Defendants

D-1 through Adv. Ms. Saba Gulzar, Standing Counsel
D.2 through Adv. Ms. Aga Hymayun, Standing Counsel

In the matter of: -	Suit for Declaration and Mandatory Injunction
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CORAM:	Massarat Jabeen	JO Code JK 00244
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JUDGMENT

1. Through the medium above titled suit, the following decrees were prayed to be passed in favour of the plaintiff:

- a) *A decree in the nature of declaration declaring the name of father of plaintiff as Javid Ahmad Tantray instead of Javid Ahmad Wani.*
- b) *A decree of mandatory injunction by virtue of which the defendants be commanded to correct the name of Father of plaintiff as Javid Ahmad Tantray instead of Javid Ahmad Wani in their relevant records.*
- c) *A decree of mandatory injunction directing the defendant No. 1&2 to issue fresh 10th and 12th class marks card and Qualification certificate testimonial mentioning therein the correct name of father of plaintiff as Javid Ahmad Tantaray instead of Javid Ahmad Wani.*

2. Briefly, the averments projected in the plaint are that the actual name of the father of plaintiff is Javid Ahmad Tantray, but inadvertently at the time of admission in R.P. School the school has recorded the name of the father of the plaintiff as Javid Ahmad Wani. The same incorrect name/caste came to be reflected in the board of school education records and in the 10th and 12th class marks cards. It is stated that the plaintiff doesn't want to derive any benefits by changing the name but it is only for the purpose of setting the records straight in the education department. Further, it is stated that the caste of the father of plaintiff recorded elsewhere in government records is Javid Ahmad Tantray instead of Javid Ahmad Wani as evidenced by State Subject certificate, Adhaar card, Ration card, bank pass book of father of plaintiff. It is then stated that the plaintiff approached defendant No. 2 seeking the correction in the name in relevant records but defendant No. 2 outrightly denied to make any correction in the name as according to them it was not a fit case for correction. Further, it is stated that due to wrong mention of parentage of plaintiff, the plaintiff will not be issued passport which violates his fundamental rights. Moreover, due to denial of passport for the above said reason, the plaintiff is not able to educate himself in foreign country which not only transgresses his fundamental rights but also violates the basic human rights.

3. Upon presentation of the suit, the defendants were put to notice to cause their presence and file written statement. The defendant-2 caused his presence through pleader and filed written statement. It is submitted in the written statement that the suit of the Plaintiff is not covered under rules/regulations governing correction in name, parentage, DOB, Caste. It is then stated that there is no cause of action against the answering defendants. On this count suit merits dismissal. None of the legal, statutory, constitutional or other rights as envisaged in the constitution stand violated or infringed by the answering defendants. Further, it is submitted that the particulars of plaintiff recorded in the school as well as the BOSE records is Hammad Ullah S/O Javid Ahmad Wani, mother's name Tawheeda Javid DOB 15/01/2002 under registration number N7303090049 and not father's name as Javid Ahmad 'Tantray'. It is further submitted that if the father of the applicant is illiterate but the plaintiff himself was educated and filled the registration return particulars and also filled admission form and permission form himself. Furthermore, it is submitted that answering defendant does not take into consideration any other records like state subject, Aadhaar card, Bank pass book, Ration card, etc. other than which has been communicated by the concerned school. It is then stated that the plaintiff has not approached the answering defendant for correction and Para No 5 is vehemently denied. It is further submitted that a candidate is supposed to file representation before the concerned authorities within one year after the receipt of matriculation certificate through proper channel but the plaintiff has not represented to the concerned authorities. Correction can be affected only when there is variation between school record and Board record. In the present case there is no variation between school record and Board record, hence no relief can be granted in favour of the plaintiff. Since the correction case of the Plaintiff is not covered under rules and regulations governing corrections in parentage and name as the Plaintiff's parentage has been recorded as Hammad Ullah S/O Javid Ahmad Wani, mother's name Tawheeda Javid DOB 15/01/2002 under registration number N7303090049 and not father's name as Javid Ahmad 'Tantray' in the school records at the time of admission in Primary class by his parents at their own sweet will. It is further submitted that the defendant Board records the particulars of each candidate into the relevant records of the Board on the basis of basic record forwarded by the

concerned school when the candidate is in 9th class and on that basis the answering defendant issues the registration number as well as registration card to the candidate.

4. Since defendant no.1 and 3 had not cause their presence before the Court, ex-parte proceedings were initiated against them vide order dated 10.12.2022. The Court then framed issues in the matter. The issues so framed are reproduced hereinbelow.

Issue No.1: Whether the plaintiff has no cause of action to institute the present suit against defendant No.2? (OPD)

Issue No.2:- Whether the actual parentage of plaintiff is Javaid Ahmad Tantary? (OPP)

Issue No.3:- If the issue No.2 is proved in affirmative, whether the defendant No.3 has wrongly recorded the parentage of plaintiff as Javaid Ahmad Wani? (OPP)

Issue No.4:- Relief

5. The defendant no.1 then filed an application under Order 9 Rule 7 CPC seeking setting aside of ex-parte proceedings initiated against him. The said application came to be allowed vide order dated 08.09.2023. The parties had led their evidence in the matter. Before drawing any conclusion, it would be profitable to reproduce the statements of witnesses produced by the parties in the matter.

6. Statement of plaintiff as his own witness deposed on affidavit that the name of the father of the deponent is Javid Ahmad Tantray but inadvertently at the time of admission in R.P. school, the school has recorded the name of the father of the deponent as Javid Ahmad Wani instead of Javid Ahmad Tantray and same incorrect name of father of the deponent is recorded in JK BOSE records that reflects in 10th and 12th class marks certificates of the deponent. The father of the deponent is an illiterate person and as a consequence he was unable to detect the said clerical mistake in the name in the certificates of the deponent. The name of the father of the deponent recorded elsewhere in government records is Javid Ahmad Tantray instead of Javid Ahmad Wani. The deponent approached defendant No.2 seeking the correction in the name in relevant records but defendant No.2 outrightly denied to make any correction in the name as according to them it was not a fit case for correction. Due to the said mistake in the name of the father of the deponent, the deponent shall face hardships in future in securing admission in the higher studies and while obtaining the passport, as such deponent was constrained to file the present suit. Praying therein direction upon the defendants to rectify the said mistake and true & correct merits be shown wherein it exists so that deponent is not put to any sort of inconvenience and is not denied his legal.

7. During cross-examination by counsel for defendant no.2, the witness deposed that his primary education has been done in R.P School. He was admitted in R.P school by his parents. The deponent was in 9th grade in the year 2017. It is true that he qualified his 10th class examination in the year 2018. The admission form for class 10th was filed by the deponent himself. The particulars entered by the

deponent have been mentioned in the issued certificate. The deponent went to Board for rectification of his name. The deponent drafted his preliminary statement in the court. The deponent signed his preliminary statement after reading it. The Para no.2 of the preliminary statement is true. The preliminary stamp does not have advocate's stamp. The deponent has not filed any representation before the Court. No further questions.

8. Statement of plaintiff's witness Javid Ahmad Tantray S/o Ghulam Mohammad Tantray R/o Kanitar Naseem Bagh, Srinagar, aged 50 years on affidavit deposed that he is the father of the plaintiff and is well aware about the facts of the case. The name of the deponent is Javid Ahmad Tantray however while admitting the plaintiff in the RP School (defendant No 3), the school authorities wrongly recorded the caste of the deponent in the records of plaintiff as Wani instead of Tantray and the same wrong caste was recorded in the J&K BOSE records of the plaintiff. The deponent is an illiterate person and as such could not detect the said mistake in the records of the plaintiff. The name of the deponent as Javid Ahmad Tantray is recorded in all his other records but in the school and educational records of the plaintiff, the name of the deponent has been inadvertently recorded as Javid Ahmad Wani. In order to rectify the said error, the plaintiff along with the deponent approached the defendant No 2 and sought necessary correction in the caste of the deponent however the defendant No 2 refused to do so. Due to the said mistake in the caste of the deponent in the educational records of the plaintiff, the plaintiff shall face hardships in future in securing admission in the higher studies and while obtaining the passport, as such the plaintiff was constrained to file the suit praying therein a direction upon the defendants to correct the name of the deponent in the educational records of the plaintiff and record the father's name of the plaintiff as Javid Ahmad Tantray instead of Javid Ahmad Ahmad Wani.

9. During cross-examination by the counsel for defendant no.2, the witness deposed that he had admitted his son (plaintiff) in RP School. The deponent cannot say in which year, the plaintiff was admitted to the school. At the time of admission in the school, the deponent had entered the caste and parentage of the plaintiff. The deponent now wishes to change the caste and wants his son's caste to be Tantray. The deponent does not remember in which year he had filed an application before defendant department for change of caste. The deponent cannot say when the plaintiff passed his matrix. It was deponent who has made a mistake while entering the caste of the plaintiff. No further questions.

10. Statement of plaintiff's witness Mr. Mohd Faisal S/O Shabir Ahmad Tantray R/O Kanitar Naseem Bagh Srinagar, aged 29 on affidavit deposed that he is the cousin brother of the plaintiff and is well aware about the facts of the case. The name of the father of the plaintiff is Javid Ahmad Tantray however in the school records of the plaintiff, his father's name was wrongly recorded as Javid Ahmad Tantray instead of Javid Ahmad Tantray and same wrong name of the father of the plaintiff was recorded in the JK BOSE records of the plaintiff. The father of the plaintiff is an illiterate person and as such could not detect the said mistake in the records of the plaintiff. The name of the plaintiff's father as Javid Ahmad Tantray is recorded in all his other records but in the school and educational records of the plaintiff, the caste of the father of the deponent has been inadvertently recorded as Wani instead of Tantray. In order to seek correction in his caste in the educational records, the plaintiff along with his father approached the defendant No 2 and

requested him to correct the father's name of the plaintiff but the defendant No 2 refused to do so. Due to the said mistake in the caste of the plaintiff's father in the educational records of the plaintiff, the plaintiff shall face hardships in future in securing admission in the higher studies and while obtaining the passport. Since the plaintiff's father is the uncle of the deponent, as such the deponent is well aware that the caste of the plaintiff is Tantray and not Wani.

11. During cross-examination by the counsel for defendant no.2, the witness deposed that in the year 2005-06, the plaintiff was admitted in R.P school. The deponent cannot say who admitted the plaintiff. The deponent also cannot say what is the caste and parentage of the plaintiff is registered in the school. The defendant no.2 had not committed any mistake in the name, case and parentage of the plaintiff. What was forwarded by the school, same has been mentioned by the Board. The deponent didn't accompany the plaintiff to defendant no.2. No further questions.

12. Statement of defendant's witness recorded on 22.08.2023, Mr. Ghulam Nabi Dar S/o Mohammad Sharief Dar R/o Bemina Srinagar, occupation Employee, age 44 years: During examination-in-chief deposed that he is presented posted as Record Keeper in the Board of School Education. The deponent was brought the record of Hammad Ullah (plaintiff) with him before the court. The deponent has brought the original 10th class qualification and original Admission form of the plaintiff. The Admission Form of the plaintiff which has been brought by the deponent has signatures of R.P School's Principle. The form was forwarded by School to the Board for plaintiff's 10th class examination. As per the form, the plaintiff's name is Hammad Ullah and his father's name is Javid Ahmad Wani while his mother's name is Tawheeda Javid with Date of Birth 15.01.2002 under Registration No. N17303090049. It was on the basis of this form; the Board entered the particulars of the plaintiff in their records and issued the certificate accordingly. The Board does not enter the name or parentage of any candidate. The deponent presented a photocopy a original form.

13. During cross-examination by plaintiff's counsel, the witness deposed that he cannot say that if plaintiff has one name in his Date of Birth Certificate and another in Board's Certificate, it can create hurdles in his educational career. The name mentioned on Date of Birth Certificate should also be written in Board's certificate. The deponent does not know whether the plaintiff had visited the Board's office for change of his name because deponent is posted in Record section. The deponent cannot say if this Court passes an order directing to change the name of plaintiff, it is job of another section. No further questions.

14. Statement of Defendant No.2's witness recorded on 15.11.2023, Mr. Sajad Rashid Baba S/o Abdul Rashid Baba R/o Gojwara, presently working as Dealing Assistant Registration Section, JK Board of School Education, Bemina Srinagar: During examination-in-chief deposed that he has brought the original record pertaining to the plaintiff as well as R.R form for class 9th. The said record was forwarded to Board by R.P School Alamdar Colony Lal Bazar, Srinagar. As per records, the plaintiff's name is Hammad Ullah S/o Javid Ahmad Wani, mother's name Tawheeda javid, D.O.B 15.01.2002, registration no. N173203090049. The Board prepares the record on the basis of information provided by the schools and

on this information, certificates etc. are issued. The registration card is also issued as per the said information. The Board does not change name, parentage and caste or any other information of any candidate by itself. The deponent has brought with him an attested copy of the original record, same is produced before the court.

15. During cross-examination by counsel for the plaintiff, the witness has deposed that he does not possess any knowledge that the name, parentage and date of birth of the candidates mentioned in R.R forms should be same as mentioned in Date of Birth Certificate. The deponent has no knowledge that the plaintiff had visited the Board's office for change of his father's caste. If the Court issues a direction for change of caste of the plaintiff's father, the Board would have no objection.

16. After going through the material placed on record, the issues so framed are decided as below:

17. Issue No. 1: Whether the plaintiff has no cause of action to institute the present suit against defendant No.2: The court held that the plaintiff had a valid cause of action. The clerical mistake in recording the plaintiff's father's name caused significant hardships, including the inability to obtain a passport and pursue higher education. The suit was justified as it sought to rectify an error affecting the plaintiff's rights.

18. Issue No. 2: Whether the actual parentage of plaintiff is Javid Ahmad Tantary? The court found that the plaintiff successfully proved that his father's name is Javid Ahmad Tantary. This was supported by evidence, including government-issued documents such as the Aadhaar Card, Ration Card, and State Subject Certificate, which consistently showed the correct name.

19. Issue No. 3: If the issue No. 2 is proved in affirmative, whether the defendant No. 3 has wrongly recorded the parentage of the plaintiff as Javid Ahmad Wani? The court determined that Defendant No. 3 had indeed recorded the father's name incorrectly as "Javid Ahmad Wani" instead of "Javid Ahmad Tantary." The mistake occurred during the plaintiff's admission to school and was due to oversight, as testified by the plaintiff and his father.

20. After completion of evidence, the file was put for arguments. Heard counsels for both side, perused the material placed on record.

21. The plaintiff is seeking corrections in his educational records, as his father's name was inadvertently recorded as "Javid Ahmad Wani" instead of the correct name, "Javid Ahmad Tantary." The plaintiff presented evidence, including government-issued documents such as the State Subject Certificate, Aadhaar Card, and Ration Card, which consistently show the correct name. Both the plaintiff and his father testified that the mistake occurred during the plaintiff's admission to R.P. School due to oversight and illiteracy. Ld. counsel for the plaintiff has relied upon the judgment of Hon'ble Supreme Court in case titled Jigya Yadav (minor) V. C.B.S.E & Ors, wherein it was held that individuals have the right to correct personal information in educational certificates to reflect their true identity. The Court emphasized that rigid rules by Boards like CBSE should not hinder this right, as a person's name and identity are protected under Article 19(1)(a) of the

Constitution. It directed CBSE to amend its rules to provide a more flexible and fair process for such corrections

22. On the other hand, the defendants, particularly Defendant No. 2 (JK BOSE), opposed the suit on procedural grounds, arguing that such corrections are not permitted under existing rules, especially when there is no discrepancy between the school and Board records. They also stated that the plaintiff did not approach the Board within the stipulated time for making corrections. However, the defendant witnesses admitted they would have no objection to making the corrections if directed by the Court.

23. Having gone through the entire material, this Court finds that the error in recording the father's name was clerical in nature and not intentional. Denying the plaintiff the opportunity to correct this mistake would unfairly restrict his rights, including obtaining a passport and pursuing higher education abroad. Fundamental rights under the Constitution cannot be denied on procedural grounds, particularly when the mistake is proven and causes significant hardship. As such, in view of what has been discussed herein above, the following decree is passed in favour of the plaintiff:

I). A decree of Mandatory Injunction direction the defendant No.2, JK BOSE, to correct the name of the plaintiff's father as "Javid Ahmad Tantray" in their records and to issue fresh 10th and 12th class marks card and qualification certificates mentioning the name of plaintiff's father as "Javid Ahmad Tantray".

24. In view of the educational career of the plaintiff, the defendant no.2 is directed to issue the certificates above directed, within a period of 15-days from the receipt copy of this order. Office is directed to prepare decree sheet accordingly.

Disposed of. Be consigned to records under rules.

Announced.

24.12.2024

**Massarat Jabeen (Sub-judge)
Spl. Mobile Magistrate, (PT&E)
At Srinagar**