

[A.F.R.]

[Reserved]

Court No. - 5

Case :- MISC. SINGLE No. - 26611 of 2017

Petitioner :- Shivanya Pandey

Respondent :- State Of U.P Thru Prin Secy Secondary Edu Lko & Ors

Counsel for Petitioner :- Shubham Tripathi, Ali Jibran, Aman Khan, Suyash Manjul

Counsel for Respondent :- C.S.C, Kirti Srivastava

Hon'ble Vivek Chaudhary, J.

1. Heard Sri Mohd. Aman Khan, learned counsel for petitioner and learned Standing Counsel for the State.

2. Present writ petition is filed by the petitioner Shivanya Pandey praying that respondent no.2 Board of High School and Intermediate Education, Allahabad (U.P.) (U.P. Board) may be directed by this Court to change name and gender of the petitioner in her matriculation mark-sheet and thereafter, respondent no.3 Council for the Indian Schools Examination, New Delhi (CISE Board) may also change the name and gender in the mark-sheet of intermediate of the petitioner. Further a mandamus is also sought commanding the respondent no. 2 and 3 respectively to amend their regulations and guidelines with regard to change of gender and names.

3. Facts of the case are that petitioner with her earlier name as Vikas Pandey and gender as male appeared and passed High School on 10.06.2011 from the Children Academy Public School, Lucknow affiliated to the U.P. Board and Intermediate in the year 2013 from the Lucknow Public Collegiate, Lucknow affiliated to the CISE Board. Petitioner was suffering from gender dysphoria

and, therefore, underwent gender reassignment surgery on 23.10.2017 from male to female at Fortis Hospital, New Delhi. On 27.05.2017, petitioner got published a gazette notification in respect of change of her name from 'Vikas Pandey' to 'Shivanya Pandey' and gender from 'male' to 'female'. Petitioner also got an adhar card and pan card issued in her new name and gender i.e. Shivanya Pandey, female. With the change of name and gender, petitioner now required change of the same in her school certificates also. For the said purposes, on 04.06.2017, petitioner applied for the change in her High School mark-sheet and certificates. The form required to be filled up for the said purposes had columns for change of name and other details but was silent about the change in gender. Petitioner approached different authorities and Director, Ministry of Social Justice and Empowerment, New Delhi also sent a letter dated 22.06.2017 to the Secretary, U.P. Board requesting them to change petitioner's name and gender. Since, all the required documents were provided by the petitioner, the principal of Children Academy Public School also wrote a letter dated 03.07.2017 to the Secretary, U.P. Board requesting for a change in petitioner's name and gender. The Secretary, U.P. Board by a letter dated 14.07.2017 sought a clarification from the State Government as neither the rules nor the Intermediate Education Act, 1921 had any provisions with regard to these new circumstances. On a reminder of the Director, Ministry of Social Justice and Empowerment, New Delhi, Director of Secondary Education, U.P. also issued a letter dated 17.08.2017 to the State Government requesting it for taking appropriate measures in the matter. Meanwhile, the Secretary, U.P. Board by letter dated 07.09.2017 also required the petitioner to submit her medical certificate with regard to the gender change issued by the Chief Medical Officer. The State Government vide letter dated 15.07.2017 also communicated its decision and required the Secretary, U.P. Board to consider the case of petitioner. The matter in the aforesaid background was placed before the Examination Committee of the U.P. Board. The Examination Committee in its meeting dated 10.01.2018

decided that changes of name and gender as requested by the petitioner cannot be made as neither the Intermediate Education Act, 1921 nor regulations framed there under contain any such provision. The decision of the Examination Committee was communicated to the petitioner by letter dated 27.01.2018. By letter dated 02.02.2018 original mark-sheet of the petitioner was also returned to her without affecting any changes. In the said background petitioner has approached this Court with the prayers aforesaid.

4. Learned counsel for the petitioner submits that with the development of medical science this challenges of conflict in personality and body stands resolved and in the given circumstances it is incumbent upon different authorities to make provisions for change of older records. He relies upon the judgment passed in case of ***National Legal Services Authority Vs. Union of India & Others***; reported in ***[(2014) 5 SCC 438]*** (hereinafter referred to as 'NALSA' case). He submits that right to decide self identity and gender is recognized by the Supreme Court in NALSA case and directions were also issued to the State Governments to grant legal recognition of gender identity and further directions were also issued. Petitioner identifies herself as a female and has also gone a psychological treatment and gender reassignment surgery. Thus, appropriate Governments as well as the Boards are obliged to give effect to the changes required in her educational records. This new development in medical science is also addressed by the Central Government by enacting The Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as 'the Act') and by framing rules under the same. Section 2(k) of the aforesaid Act reads:-

"2(k) "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta."

5. Section 3 of the Act prohibits discrimination against any transgender person on the grounds mentioned in the said section which includes:-

“(a) denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;

(e) denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public.

(i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.”

6. Section 4 of the Act provides a transgender person to have a right to be recognized as such and a transgender person under Section 4(2) of the Transgender Protection Act, 2019 is also given a right to self perceived gender identity. Section 5 provides right to transgender person to apply before the District Magistrate by way of an application for issuance of certificate of identity as transgender person in the manner prescribed. Under Section 6, the District Magistrate is required to issue a certificate upon an under Section 5 as per the procedure prescribed. The gender in all official documents is recorded as per certificate issued under Section 6(1). Section 7 provides that in case after issuance of a certificate under Section 6(1) the transgender person undergoes surgery to change gender, such person may make an application, along with a certificate issued to that effect by the Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate in the prescribed manner. On such an application, the District Magistrate, on being satisfied is required to issue a certificate indicating change in gender and such change would entitle a person to get the required changes made in the birth certificate and other official documents relating their identity.

7. Learned counsel for petitioner submits that as per the judgment of Supreme Court passed in *NALSA* case(supra) as well as procedure of the Act, petitioner is entitled for issuance of appropriate certificate with regard to change of gender.

8. Opposing the same, learned Standing Counsel submits that with regard to change of gender, the certificate can only be issued under Section 7 of the Act to a person who is having a certificate under Section 6 of the Act. Since, petitioner is not having a certificate under Section 6 and had changed his gender before coming into the force of the Act, petitioner is not entitled to apply under Section 7 of the Act.

9. The very purpose of bringing in force the Act is to provide equality and respect to the transgender persons. The Act is a socially beneficial legislation and therefore, this Act cannot be given an interpretation which would defeat the very purpose for which the same is brought in force. It has to be interpreted in a manner that solemn purpose for which it is legislated is achieved. The purpose is to give recognition to transgender persons as they perceived themselves and, in case, they undergo a gender reassignment procedure, to provide them appropriate changed certificates and identity documents. Therefore, Section 7 of the Act cannot be given a meaning confined in the manner argued by learned Standing Counsel. Section 7 is required to be interpreted in a manner that the transgender persons who are issued a certificate under Section 6 or persons like petitioner who had undergone the gender re-assignment procedure prior to coming into force of the Act, both are held entitled to apply before the District Magistrate for issuance of a certificate indicating change in gender. Only on the basis of such a certificate issued by the District Magistrate under Section 7 of the Act the transgender person can apply for change of their birth certificate and other official documents relating to their identity. Denying such a right to persons who had already undergone the gender re-assignment procedure would frustrate the very purpose of the Act, as large number of persons would be left

out discriminated in the society.

10. In view of the aforesaid, petitioner is permitted to submit an application under Section 7 of the Act before the District Magistrate. The District Magistrate shall broadly following the procedure under the Transgender Persons (Protection of Rights) Act, 2019 and Transgender Persons (Protection of Rights) Rules, 2020 get the fact of the gender re-assignment verified and on being satisfied issue the required certificate to the petitioner. Such a procedure shall be completed by the District Magistrate within a period of 60 days from the date petitioner applies before him along with a certified copy of this order. On the basis of the certificate issued by the District Magistrate, petitioner shall be at liberty to approach the authorities concerned i.e. Respondent no.2 Secretary, Board of High School and Intermediate Education, Allahabad (U.P.) and respondent no.3 Chairman, Council for the Indian Schools Examination, New Delhi (CISE Board) for changing her educational records and issue her fresh changed mark-sheets and certificates. Respondent no.2 and 3 shall also take immediate steps for change of name and gender in educational mark-sheets and certificates of the petitioner and issue fresh changed mark-sheets and certificates to her, as per the certificate issued by the District Magistrate to the petitioner. Such an exercise would be completed within a period of four weeks from the date petitioner approaches the Boards along with a certified copy of this order and the certificate issued to her by the District Magistrate.

11. With the aforesaid, present writ petition stands ***allowed***.

Order Date :- 26.11.2021

Arti/-

(Vivek Chaudhary,J.)