



2024:UHC:6094

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<p>WPMS No. 215 of 2024 <b><u>Hon'ble Manoj Kumar Tiwari, J.</u></b></p> <p>Mr. Amanjot Singh Chadha, Advocate for the petitioner.</p> <p>2. Mr. Suyash Pant, Standing Counsel for the State of Uttarakhand/ respondent nos. 1 &amp; 4.</p> <p>3. Mr. Virendra Singh Rawat, Advocate for respondent nos. 2 &amp; 3.</p> <p>4. Petitioner underwent sexual reassignment surgery in the year 2020. As per certificate dated 28.12.2020, issued by Consultant, Department of Plastic &amp; Cosmetic Surgery, Sir Ganga Ram Hospital, New Delhi, before surgery petitioner was a female and was known as 'Ms. Seema Bisht', but, after surgery, he has to be considered as male with preferred name 'Mr. Shreyansh Singh Bisht'. District Magistrate, Nainital has issued an Identity Card to petitioner, in terms of Section 7 of Transgender Persons (Protection of Rights) Act, 2019 r/w Rule 6 of the Transgender Persons (Protection of Rights) Rules, 2020, which is on record as Annexure-2 to the writ petition.</p> <p>5. Perusal of the said certificate reveals that sex of petitioner has undergone a change; he has become male, and his name is mentioned as 'Shreyansh Bisht'.</p> <p>6. Since petitioner passed High School Examination and Intermediate Examination in the year 2006 &amp; 2008 respectively, therefore, after undergoing surgery, she made an application to Uttarakhand School Education Board for change of her name and sex in the mark-sheet/certificates issued in respect of High School and Intermediate examinations.</p> <p>7. Petitioner's request has been turned down by Joint Secretary, Uttarakhand School Education Board, vide order dated 18.08.2021. the sole reason</p>



assigned for rejecting petitioner's application is that his case is not covered by Clause 27 of Chapter-12 of the Regulations framed by the Board. Thus, feeling aggrieved, petitioner has approached this Court seeking the following reliefs:-

*"I) Issue a writ, order or direction, in the nature of certiorari quashing impugned letter dated 18/08/2021 contained as Annexure No. 4 to the writ petition.*

*II) Issue a writ, order or direction, in the nature of mandamus commanding the respondents for issuance of fresh changed mark sheets and certificates to petitioner as per changed name in the certificate issued by the District Magistrate to the petitioner.*

*III) Issue a writ, order or direction, in the nature of mandamus commanding the respondents for framing relevant rules for change of name of transgender persons in their educational certificates."*

8. Learned counsel for petitioner submits that name and sex of petitioner has been changed in the Aadhar Card issued by Unique Identification Authority of India. He submits that District Magistrate in exercise of his statutory powers has given a certificate and identification card to petitioner, therefore, the ground taken by Board for rejecting petitioner's application is unsustainable. He submits that the only ground taken for rejecting petitioner's request is that his case is not covered by Clause 27 of Chapter 12 of the Regulations. Clause 27, as reproduced in para no. 4 of the counter affidavit, is extracted below:-

*"The name is obscene or the name sounds like an abusive word or the name appears to be disrespectful or in case of any other such situation."*

9. Based on the said provision, learned counsel appearing for the Board submits that petitioner's prayer for change of name/sex could not be entertained, as the Regulations permit change in name in the certificates only when the name is obscene or it sounds like an abusive word or the name appears to be disrespectful, which is not the case here. He submits that pursuant to Resolution passed in general meeting held on 28.01.2023, Secretary, Uttarakhand School Education Board submitted a proposal to the Director for making necessary amendment in Regulation 27 in the light



of provisions contained in Transgender Persons (Protection of Rights) Act, 2019 and the Rules framed thereunder and the State Government had raised certain queries; reply to those queries was made, however, matter is pending consideration before the State Government. Learned counsel for respondent no. 2 has drawn attention of this Court to the reminder dated 05.02.2024, which was issued by Secretary, Uttarakhand School Education Board to the Director, Secondary Education, which is on record as Annexure-6 to writ petition.

10. Parliament has enacted the Transgender Persons (Protection of Rights) Act, 2019, which confers certain rights upon transgender persons. Hon'ble Supreme Court in the case of *National Legal Services Authority v. Union of India & others*, (2014) 5 SCC 438 has recognised right to decide self identity and gender. Hon'ble Allahabad High Court in the case of *Shivanya Pandey v. State of U.P. and others* reported in 2021 AWC 5976 has held as under:-

*“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.”*

11. Hon'ble Karnataka High Court in *Jeeva M. v. State of Karnataka and another* (Writ Petition No. 12113 of 2019) has relied upon the judgment rendered by Hon'ble Apex Court in the case of



National Legal Services Authority (supra) for issuing direction to the State Government to take necessary steps to ensure that transgender persons are not driven to Courts for changing their name and gender in educational certificates. Para nos. 8 & 9 of the said judgment are extracted below:-

*“8. The Hon'ble Apex Court in the case of National Legal Services Authority vs. Union of India and others reported in (2014) 5 SCC 438 has observed thus:-*

*"135.1. Hijras, eunuchs, apart from binary genders, be treated as "third gender", for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by Parliament and the State Legislature.*

*135.2. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.*

*135.3. We direct the Centre and the State Governments to take steps to treat them as Socially and Educationally Backward Classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.*

*9. In the light of the judgment of the Hon'ble Apex Court as aforesaid, it is mandatory for the State of Karnataka represented by the Principal Secretary of Educational Department to issue circular instructions to the authorities/institutions concerned to act in consonance with the directions issued by the Hon'ble Apex Court. The Principal Secretary, Education Department, State of Karnataka shall consider the same and take necessary action to implement the directions of the Hon'ble Apex Court in an expedite manner without driving the Transgenders to Courts in as much as change of their name and gender is concerned.”*

12. The ground taken for rejecting petitioner's application cannot be sustained in the eyes of law. Regulation 27, which has been relied by respondent no. 2 for rejecting petitioner's application was incorporated in the statute book before judgment of Hon'ble Supreme Court in the case of National Legal Services Authority (supra). Parliament has also stepped in for protecting the rights of transgender persons.

13. In view of these developments, Regulation 27 cannot remain static. Uttarakhand School Education Board, which is responsible for incorporating



2024:UHC:6094

			<p>change in the name/sex of a student in the certificates has recognised the right of transgender persons and has submitted proposal seeking permission to amend the Regulations. State Government, however, is sitting tight over the matter. Delay on the part of State Government is against public interest and is also against the spirit of the Transgender Persons (Protection of Rights) Act, 2019.</p> <p>14. In such view of the matter, the impugned rejection order dated 18.08.2021 deserves to be set aside and is hereby set aside. The writ petition is allowed. Secretary, School Education Department, Government of Uttarakhand is directed to take decision on the proposal submitted by respondent no. 2 on 26.08.2023 and 05.02.2024 in the light of the spirit of the Transgender Persons (Protection of Rights) Act, 2019 and the Rules framed thereunder, within three weeks from the date of production of certified copy of this order. Respondent no. 2 shall thereafter re-consider petitioner's application, as per law, within two weeks.</p> <p style="text-align: right;"><b>(Manoj Kumar Tiwari, J.)</b> 27.08.2024</p> <p>Navin</p>
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