**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**

**Constitution Petition No. D-433/2022**

**(Mir Mohammed Brohi V. Federation of Pakistan & others)**

1. For Orders on office objection
2. For orders on MA No 1532/2023
3. For hearing of main case

Before:
**Mr. Justice Muhammad Saleem Jessar**
**Mr. Justice Nisar Ahmed Bhanbhro**

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| Petitioner: | Mir Muhammad Brohi<br>Through Mr. Javed Ahmed Soomro, Advocate. |
| Respondent No.3 to 8: | Sui Southern Gas Company<br>Through Mr. Imdad Ali Mashori, Advocate. |
| Respondents No.1 & 2: | Through Mr. Oshaque Ali Sangi<br>Assistant Attorney General for Pakistan |
| Date of hearing: | 15-05-2025 |
| Date of Order: | 29-05-2025 |

**ORDER**

**Nisar Ahmed Bhanbhro J.-** This petition is directed against the concurrent findings of the single bench of National Industrial Relations Commission and full bench of National Industrial Relations Commission Islamabad, wherein the grievance petition of the petitioner was dismissed vide orders dated 01-09-2021 and 01.03.2022 respectively.

2. Facts in brief giving rise to this petition are that the Petitioner joined the respondents establishment as helper in the year 1994 and performed his duties with full zeal and passion in accordance with law; that he completed his service for a continuous period of 02 years successfully but thereafter, he along with thousands of other employees were retrenched from service in the year 1997 on the basis of political influence but later on he was reinstated into service as per judgment dated 02-05-2003 passed by the August Supreme Court of Pakistan vide reinstatement order dated 10-09-2007 against the same post of helper and his services were considered w-e-f 10-09-2007; that thereafter, all of sudden, he was issued a show cause notice dated 03-04-2015 with the allegation that at the time of his appointment in the company on 08-08-1994 he declared the year of his birth as 1961 but thereafter at the time of his reinstatement he declared his year of birth as 1968 on the basis of NIC and CNIC which was tantamount to misconduct and fraud; that he responded the said charge sheet by filing written reply and by refuting the allegations but on 25-09-2019 his services were terminated by the respondent No.2 and feeling aggrieved from said termination order, he submitted departmental appeal/representation to the respondent No.1 for redressal of his grievances but the same was not responded. Hence, he filed the grievance petition under section 33 of the NIRA, 2012 before NIRC Islamabad for his reinstatement into service with all back benefits.

3. The respondents filed their written reply to the grievance petition by controverting the contention of the Petitioner and raising many objections on point of law as well as on facts. According to the respondents, the Petitioner at the time of his initial appointment had himself written in medical fitness certificate his year of birth as 1961 but afterward at the time of his reinstatement in service in 2007, he declared his year of birth as 1968 in application for employment on the basis of old NIC and CNIC which were issued after joining the

respondent's company and as he never asked the respondent's company for correction of his date of birth in his service record, therefore, he committed misconduct and as such he was terminated from service after issuance of show cause notice and holding of regular inquiry in which he fully participated. It has been further alleged that the Petitioner never served grievance notice upon respondents prior to filing the grievance petition and his grievance petition was also time barred. On these grounds, they prayed for dismissal of the same.

4. Record depicts that after recording of evidence and hearing arguments of learned counsel for the parties, the learned single member, NIRC, Islamabad dismissed the grievance petition of the Petitioner vide impugned order dated 01-09-2021 on the ground that he was proved guilty of misconduct and he did not send grievance notice before filing of the grievance Petition before NIRC.

5. Petitioner filed appeal No.12-A(18)/2021-S before the full bench of National Industrial Relations Commission Islamabad, which was declined vide orders dated 01-03-2022 by maintaining the order of Single Bench. Hence this petition

6. Mr Javed Ahmed Soomro, Learned counsel for the petitioner submitted that the petitioner had joined his service on 08-08-1994 by submitting an application, which was countersigned by official of respondent company; however, claims that his date of birth as per his CNIC (page 105) is 01-01-1968, whereas the respondents claim it to be 1961, he further submitted that the petitioner was terminated from the job on 31-10-1997, whereas he was reinstated on 10-09-2007; hence, submitted that in case the contention of the Respondent Company is deemed to be true; even then the petitioner's appointment was not liable to be dismissal; however, Company could have treated alike as for as to the claim of Company the date of Birth of Petitioner was to be treated as of 1961. He next submitted that the respondents were required to take action against the petitioner after his reinstatement within one month, however, they remained mum for noticeable period spreading over 11 years and such apathy as well as lethargic attitude on their part is not only unwarranted, but show malice on their part. He has also drawn attention of the court towards the evidence recorded by the respondents as well as the petitioner before NIRC and submits that the grievance notice was given to the respondents and certain questions were put from him, yet no suggestion with regard to denial or acceptance was brought on record by the respondents and submitted that the respondents have acted beyond their scope and wrongly terminated the service of the petitioner, therefore, by granting this petition he may be reinstated in service with all back benefits. In support of his contention he placed reliance upon the cases reported as Executive District Officer V/S Rizwana Kausar [2011 PlC (C.S.) 1296], Province of Punjab v/s Zulfiqar Ali (2006 SCMR 678) and Secretary to Government of NWFP v/s Sadullah Khan (1996 SCMR 413).

7. Mr. Imdad Ali Mashori Learned Counsel for respondents No.3 to 8 so assisted by Learned Assistant Attorney General for Pakistan opposed the petition and submitted that the petitioner himself had submitted application regarding his appointment, mentioning his date of birth as 1961 and not 1968, therefore, he was rightly terminated. On query of the court, whether the alleged misconduct as alleged by the respondents was sufficient to terminate the services of the petitioner, he has no answer but to insist that the petitioner was rightly terminated and submitted that by dismissing this petition impugned orders may be maintained. He placed reliance upon the cases reported in Dr Muhammad Aslam Baloch Versus Secretary Government of Balochistan (2014 SCMR 1723), Qamaruddin Versus Pakistan through

Secretary Establishment (2007 SCMR 66) and Khushhal Khan Versus Muslim Commercial Bank (2002 SCMR 943).

8. Heard Arguments, perused material on the record.

9. Meticulous perusal of material on revealed that the Petitioner was kicked out of the job by Respondent Suit Southern Gas Company on an accusation that while entering into temporary service in year 1995, he recorded his date of birth as 1961, he was terminated from the job and reinstated in service in year 2007 pursuant to the judgment of Honorable Supreme Court, wherein he submitted an application along with NIC and CNIC mentioning the date of birth as1968, which constituted an offence of misconduct within the meaning and definition of Section 15 of the Industrial and Commercial Employment (Standing Orders) Ordinance 1968 (the Ordinance). The Petitioner was proceeded against and after a process of regular inquiry he was dismissed from service vide order dated 25.09.2019.

10. The Petitioner filed grievance petition before National Industrial Relations Commission (NIRC) Islamabad, he was knocked out on the ground that he filed grievance petition under section 33 of the National Industrial Relations Act 2010 without giving a grievance notice to the Employer, since the mandatory requirement of law was not fulfilled, therefore, Grievance Petition failed and was dismissed accordingly. The Full Bench of NIRC maintained the order of Single Bench and dismissed the appeal of Petitioner on the same point.

11. Firstly, we will address the question whether mention of wrong date of birth would constitute the offence of misconduct inviting the major penalty of dismissal from service? Whether the Company could make correction and in the date of birth or treat the date of birth recorded in service record as final?

12. The definition of offence of misconduct and its punishment are provided under Standing Order 15 of the Ordinance, Standing Order 15(3) defines the misconduct, it provides that an employee can be proceeded against and dismissed from service or imposed any other penalty provided under the on account of misconduct.
which reads as under:

> **15. Punishments.** (1) A workman may be reprimanded or fined in the manner prescribed under the Payment of Wages Act, 1936 (IV of 1936) upto three paisa in the rupee of the wages payable to him in a month, for any of the following acts or omissions, namely:-
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> (i) in case where the Payment of Wages Act, 1936 (IV of 1936), is applicable, the list of acts and omissions for which fine may be levied shall be same as approved by the Chief Inspector of Factories or any other officer concerned;
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> (ii) in other cases, the following shall be the list of acts and omissions–
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> (a) disregard or disobedience of rules or orders;
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> (b) improper behaviour, such as drunkenness;
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> (c) making false or misleading statements;
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> (d) inefficient, dilatory, careless or wasteful working;
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> (e) malingering.
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> (2) A workman found guilty of misconduct shall be liable to any of the following punishments:
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> (i) fine in the manner prescribed under the Payment of Wages Act, 1936 (IV of 1936), upto three paisa in the rupee of the wages payable to him in a month;

(ii) withholding of increment or promotion for a specified period not exceeding one year;

(iii) reduction to a lower post; or

(iv) dismissal without payment of any compensation in lieu of notice.

**(3) The following acts and omissions shall be treated as misconduct:**

(a) willful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;

(b) theft, fraud, or dishonesty in connection with the employer's business or property;

(c) willful damage to or loss of employer's goods or property;

(d) taking or giving bribes or any illegal gratification;

(e) habitual absence without leave or absence without leave for more than ten days;

(f) habitual late attendance;

(g) habitual breach of any law applicable to the establishment;

(h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;

(i) habitual negligence or neglect of work;

(j) frequent repetition of any act or omission referred to in clause (1);

(k) striking work or inciting others to strike in contravention of the provisions of any law, or rule having the force of law;

(l) go-slow.

(4) No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct within one month of the date of such misconduct or of the date on which the alleged misconduct comes to the notice of the employer and is given an opportunity to explain the circumstances alleged against him. The approval of the employer shall be required in every case of dismissal and, the employer shall institute independent inquiries before dealing with charges against a workman

Provided that the workman proceeded against may, if he so desires for his assistance in the enquiry, nominate any workman employed in that establishment and the employer shall allow the workman so nominated to be present in the enquiry to assist the workman proceeded against and shall not deduct his wages if the enquiry is held during his duty hours.

(5) Where, for the purposes of conducting an inquiry into the alleged misconduct of a workman, the employer considers it necessary, he may suspend the workman concerned for a period not exceeding four days at a time so however, that the total period of such suspension shall not exceed four weeks except where the matter is pending before an arbitrator, a Labour Court, Tribunal or conciliator for the grant of permission under section 57 of the National Industrial Relations Act 2010 (XIX of 2010). The order of suspension shall be in writing and may take effect immediately on delivery to the workman. During the period of suspension, the workman concerned shall be paid by the employer to the same wages as he would have received if he had not been suspended.

13. The Petitioner is alleged to have committed fraud by mentioning his wrong date of birth firstly as 1961 when he was taken into service as temporary employee and then as 1968 when he was reinstated in service in year 2007 pursuant to the judgment of Honorable Supreme Court. The Petitioner was proceeded against on account of said misconduct in year

2015, if we consider the date of information of new date of birth as 2007, the proceedings against the petitioner were initiated 8 years thereafter. The Standing Order 15(4) of the Ordinance provides that no order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct within one month of the date of such misconduct or of the date on which the alleged misconduct comes to the notice of the employer and employee is given an opportunity to explain the circumstances alleged against him. The approval of the employer shall be required in every case of dismissal and, the employer shall institute independent inquiries before dealing with charges against a workman. It was required under the law that the employer should have proceeded against the Petitioner within one month of his submission of NIC and CNIC after his reinstatement in year 2007 but it did not happen. The employer cannot take a plea that he was not in the knowledge of the date of birth of the employee recorded in his CNIC or NIC as the employer was the custodian of the employment record of the employee, more particular when the petitioner was issued service cards and other benefits right from his reinstatement in service in year 2007 until his dismissal.

14. The show cause notice dated 25.05.2015 issued by the Employer/Respondent Company revealed the following set of allegations on which the employee was proceeded against (available at page 29 of the memo of Petition).

i. It has been revealed during scrutiny of your personal file that at the time of your initial appointment in the Company on 08.08.1994 you declared your date of birth as 1961. Moreover, your medical fitness was carried on 09.08.1994, your date of birth was declared 1961 duly signed by you.

ii. In Contrary to above, at the time of your reinstatement as per Supreme Court judgment dated 02.05.2003 you submitted form for Application for Employment and declared your date of birth as 1968 on the basis of NIC and CNIC which have been issued after your joining the company therefore element of dishonesty cannot be ruled out while declaring date of birth which is an afterthought.

iii. The above act on your part tantamount to misconduct/ fraud as you have misrepresented the factual position and mislead the management regarding your date of birth in order to extend your length of service.

15. As discussed above, the Employer / Respondent Company was required to proceed against the petitioner within one month of the submission of fresh Bio Data form in year 2007, but after lapse of about 8 years company woke up and decided to take action, which was beyond the period of limitation prescribed under the law. The contumacious laxity and lethargy on the part of Employer cannot be excused in any manner, as such the impugned action of issuance of show cause notice followed by the dismissal order was ill founded and without the sanction of law thus could not have sustained. The Petitioner at the time of his first induction in the service in year 1994 furnished information over a proforma signed by him by putting his thumb impression and the said proforma has been countersigned and verified by an officer of the Company. The writing on the proforma and the verification of the countersigning officer match, impliedly the proforma has been written by the said person, which fact also stands established through evidence, as in reply to a question asked by the Counsel for Company regarding submission of Bio Data Form wherein date of Birth of the Petitioner was mentioned as year 1961, he replied that said information was penned down by the representative of the Company and such piece of the evidence has not been denied by the Company as no suggestion was made to the Petitioner to deny such stance. The Company even has not produced any document on record wherein the date of the Birth of the Petitioner could have been mentioned as 1961. Contrary to the claim of Company, the Petitioner has

placed on record his NICs right from starting to preparation of CNIC, needless to say that details contained in CNIC are the same which were available on Manual NIC. In such circumstances when the applicant was illiterate, his date of birth on CNIC would be treated as actual date of birth, to believe that date of birth incorporated in CNIC was incorrect Company was required to establish such belief through convincing evidence, but it failed.

16. The date of Birth of an employee entered into service record cannot be altered excepting that of a clerical error, the material placed on record revealed that the Petitioner per record was born in year 1968 and the date mentioned on the proforma relied upon by the company to vindicate the petitioner appears to be a typographical mistake or human error. Incorporation of incorrect date of Birth in service record did not constitute an offence of misconduct, at the most the company could have treated the date of birth of Petitioner mentioned as 1961 and would have retired him on the said date, the disciplinary proceedings initiated on this account were not sustainable as the company cannot take any action after the passage of one month time of the alleged misconduct. Standing Orders do not provide a mechanism for dealing with the issue of change of date of birth in the service record, however, help can be sought from the general service laws, applicable to the issue. In civil service law, General Financial Rule 116 and Rule 12 – A of Civil Servants (Appointment, Promotion and Transfer) Rules 1973, underlay the principles providing a pathway of alteration in the date of birth, for the sake of convenience the rules are reproduced below:

> **12A. Alteration in the date of birth**. The date of birth once recorded at the time of joining government service shall be final and thereafter no alteration in the date of birth of a civil servants shall be permissible.

Moreover, Rule 116 of the General Financial Rules of the Federal Government, Volumes I and II (G.F.R) also does not allow any change or alteration in the date of birth except in the case of a clerical error without the previous orders of the Local Administration. The relevant excerpt from the General Financial Rules of the Federal Government Volumes I and II (G.F.R) is reproduced as under:

> **DATE OF BIRTH 116**. Every person newly appointed to a service or a post under Government should at the time of the appointment declare the date of his birth by the Christian era with as far as possible confirmatory documentary evidence such as matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under para. 117 should be recorded in the history of service, service book, or any other record that may be kept in respect of the Government servant's service under Government and once recorded, it cannot be altered, except in the case of a clerical error, without the previous orders of the Local Administration.

The Rules referred above do not accord permission for alteration in the date of birth once recorded, except in the case of clerical error. Apparently, the date of birth of the Petitioner in its Bio Data Form of 1994 appears to be a clerical error, which could be corrected, moreover mentioning the incorrect date of birth in the record did not constitute the offence of misconduct as such all the proceedings were nullity in the eyes of law.

17. In the case of The Executive Director (P&GS) State Life, Principal Office Karachi and others Versus Muhammad Nasir Area Manager State Life Corporation of Pakistan reported in 2025 SCMR 249 Supreme Court of Pakistan has been pleased to hold as under:

> 11. In the case of Manzar Zahoor v. Lyari Development Authority and another (2022 SCMR 1305 = 2022 PLC (C.S) 1128) (authored by one of us) this Court dwelled upon the Federal and Provincial Civil Servant laws and relevant Rules

in order to examine the provisions accentuated therein for recording the date of birth at the time of induction or appointment and the precise procedure to apply for the correction or rectification of the date of birth in the service record on account of some genuine mistake and error within a period of 2 years but it was not left open for an unlimited period of time or at the rest and leisure of the applicant to wake up from a deep slumber and, on one fine morning, apply for the correction predominantly at the verge of retirement to secure the lease and premium in the length of service. In our view it is obligatory for any employee to intimate his correct date of birth and to produce confirmatory documentary evidence at the time when the first entry is made in the service record which cannot be altered, except in the case of a clerical error, because the date of birth once recorded at the time of joining service is deemed to be final and thereafter no alteration in the date of birth is permissible.

12. It is an admitted position that in the original National Identity Card, the year of birth of the respondent was 1964, while in the CNIC prepared on 12.11.2002, again his date of birth was 22.09.1964. Even in his Passport (No.B2247910), his date of birth was 22.09.1964. However, the respondent was issued his new CNIC on 03.03.2023, wherein his date of birth was shown as 22.09.1966. The petitioner has attached the copy of the circular dated 23.06.2015 issued by the Corporation, wherein it was categorically mentioned that certain employees are placing a representation for the correction in the date of birth after having completed a number of years of service. Therefore, it was announced by means of the aforesaid circular that no change in the date of birth will be made if it is not requested within 2 years of the date of initial appointment. The respondent himself relied upon this circular and attached its copy with CMA No.9896 of 2024. The record reflects that the respondent first applied for the correction of his date of birth in the official record vide application dated 17.03.2023 on the basis of his matriculation certificate issued in 1983, but no justification was shown in the application as to why he himself mentioned his date of birth as 22.09.1964 when he was appointed by the petitioner's company. It is also incomprehensible that even when he applied for a CNIC in 2002, why at that time the correction was not applied, and even in his passport, issued in 2010, he maintained the same date of birth. If we keep aside all the documents which the respondent himself submitted at the time of his engagement with the Corporation, and only look at the matriculation certificate, which is now relied upon by the respondent very forcefully, then, another crucial question is cropped up, that how, in the presence of two diversified sets of evidence with regard to the date of birth of one person, such factual controversy could be resolved in the writ jurisdiction or if it would be better for the respondent to opt for a remedy in a civil court where such factual dispute, if genuinely believed to be correct, could have been decided after recording of evidence of the parties; and that, too, should have been invoked by the respondent much earlier and not at the verge of retirement.

18. Adverting to the issue of Grievance Notice, per findings of the Courts below that the Petitioner had not given any grievance notice to the employer, thus grievance petition was not maintainable having been filed in violation of mandatory requirement of law. Perusal of record revealed that soon after dismissal order dated 25.09.2019 Petitioner filed representation before the Employer on 21.10.2019 within a period of one month time. There is no concept of representation, review or appeal in the labor laws. Section 33 provides for giving grievance

notice within a period of one month of the date of issuance of dismissal order, in case of inaction by the employer Grievance petition before the Labor Tribunal would be filed within a period of two months' time. From the bare reading of the review application /departmental appeal dated 21.10.2019 filed by Petitioner it can be gathered that it was a grievance notice within the meaning and definition of the Grievance Notice, as under the labor laws only grievance notice against the action of dismissal or removal or other unfair labor practice has to be given to the employer and thereafter if grievance is not redressed the grievance petition would lie before Tribunal/ Commission / Court as the case may be. The Petitioner issued grievance notice to the employer in the shape of review or appeal or representation and thereafter filed Grievance Petition before Labor Tribunal on 16.12.2019 within a period of two months' time from the date of issuance of Grievance notice, but Learned Courts below did not appreciate this important aspect of the case and knocked out the petitioner on technical ground. Though record demonstrated that the grievance notice was also separately served upon the Respondent Company, since it was without date, therefore not accepted by NIRC as grievance notice without assigning plausible reasons.

19. Under section 33 of the IRA sending of the grievance notice to the employer is mandatory, purpose of giving notice is to intimate the employer of initiating legal proceedings, if the employer redresses the grievance the need of filing a grievance petition before Tribunal may not arise. Since no any particular form or proforma of grievance notice has been provided under the law, therefore it may be in the form of appeal, representation or review. The Court file further revealed that Petitioner sent a notice dated 21.10.2019 in the form of departmental appeal, which was produced in evidence and exhibited as Mark M. The Perusal of the Court file revealed that the Petitioner also sent a separate grievance notice to the Employer Company and such a grievance notice along with Courier Receipt dated 21.10.2019 and its delivery status was produced in evidence and exhibited as Mark N, the copies of grievance notice and courier receipts are available at page 89 of the Memo of Petition. The Employer has not disputed the receipt of such appeal, and notice meaning thereby that the intimation on the part of petitioner / employee was duly sent to the Employer for redress of his grievance, when gone unheeded, the Petitioner filed the grievance Petition.

20. The scanning of the record and in-depth examination of evidence and material on record demonstrated that the very action of the dismissal of the Petitioner on an allegation involving correction of his date of birth was not warranted under the law. The Respondent Company while conducting disciplinary proceedings relied upon a document which was not generated by the Petitioner but by the Company itself. The Respondent Company during entire episode could not establish on record that the Petitioner had provided them any document which contained his date of birth as 1961. Contrary Petitioner successfully demonstrated to believe that throughout his service career he furnished his Manual NIC which contained date of birth as 1968, and CNIC also contained his date of birth as 1968. The proforma of service which was made basis as proof of offence of misconduct was not a document of worth reliance as the same to the evasive denial of the witness of Respondent Company was generated by the officials of Company. The Petitioner who is a layman, uneducated and helper cannot be penalized for an act or omission which has not been committed by him.

21. Sequel to the above discussion, we have reached to an irresistible conclusion that the Courts below failed to exercise the jurisdiction vested in them and knocked out the Petitioner on a ground which did never exist. The dismissal order of the petitioner was passed in violation of Standing Order 15(4) of the Ordinance, as such was void, illegal ab initio and passed by misinterpreting the provisions of law, thus was a sufficient ground to set it at naught. The

contention of the Counsel for the Respondents that this Court under its writ jurisdiction cannot disturb the concurrent findings of fact recorded by the Courts below is without force, as the concurrent findings are not sacrosanct, that they can be reversed if found perverse and illegal.

22. In the case of United Bank Limited (UBL) through its President and others Versus Jamil Ahmed and others reported in 2024 P L C 50, Honorable Supreme Court of Pakistan, has been pleased to enunciate the following principle of law for examining the Concurrent findings of Courts below in writ jurisdiction of High Court vested under article 199 of the Constitution.

> 9. It is a well settled exposition of law that a right of appeal is a right of entering into a superior court and invoking its aid and interposition to redress the error of the forum below. It is essentially a continuation of the original proceedings as a vested right of the litigant to avail the remedy of an appeal provided for appraisal and testing the soundness of the decisions and proceedings of the courts below. It is always explicated and elucidated that the right of appeal is not a mere matter of procedure but is a substantive right. While considering matters in appeal, the appellate courts may affirm, modify, reverse or vacate the decision of lower courts. Fundamentally, the remedy of appeal is elected on the grounds of attack that the court below committed a serious error in the verdict on law and facts, including the plea of misreading or non-reading of evidence led by the parties in support of their contention. It is the duty of the Court and Tribunal to adhere to the applicable law in letter and spirit. It is the foremost duty of the appellate court to determine whether the oral and documentary evidence produced by the parties for and against during the trial fortifies and adds force to the weight of decision or not. No doubt the Trial Court possesses the distinctive position to adjudge the trustworthiness of witnesses and cumulative effect of evidence led in the lis and, in turn, the appellate court accords deference to the findings and such findings are not overturned unless found erroneous or defective. It is not the domain or function of appellate court and/or High Court to re-weigh or interpret the evidence, but they can examine whether the impugned judgment or order attains the benchmark of an unflawed judgment; and whether it is in consonance with the law and evidence and free from unjust and unfair errors apparent on the face of record. However, if the concurrent findings recorded by the lower fora are found to be in violation of law or based on flagrant and obvious defect floating on the surface of record, then it cannot be treated as being so sacrosanct or sanctified that it cannot be reversed by the High Court in the Constitutional jurisdiction vested in it by Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as a corrective measure in order to satisfy and reassure whether the impugned decision is within the law or not and if it suffers any jurisdictional defect, in such set of circumstances, the High Court without being impressed or influenced by the fact that the matter reached the High Court under Constitutional jurisdiction in pursuit of the concurrent findings recorded below, can cure and rectify the defect. In the present case we reached to the conclusion that the learned Full bench NIRC and learned High Court disregarded some substantial piece of oral and documentary evidence vis- -vis jurisdiction which goes to the roots of the case that needs to be thrashed out for safe administration of justice.

23. With due reverence, the case laws relied upon by the Learned Counsel for the Petitioner and Respondent Company though enunciated the principles on the point of change in date of birth and issuance of grievance notice to the Employer before institution of Grievance Petition before NIRC, but relate to a different controversy, thus are distinguishable.

24. For what has been discussed herein above, We are of the considered view that the Courts below have erred in law while dealing with the case of the Petitioner and failed to appreciate the wisdom and intent of the legislature while non suiting the Petitioner only for the reason that he sent a departmental appeal / review to the Employer instead of grievance notice, as such the concurrent findings of the Court below were perverse, illegal and suffered from jurisdictional error, misreading and nonreading of the evidence, therefore, a case for indulgence by this Court under its writ jurisdiction under article 199 of the Constitution is made out, consequently this Petition is allowed, the Order dated 01.09.2021 passed by the Learned Single Bench of NIRC in grievance petition No 4B(23)/2019 and order dated 01.03.2022 passed by the Full Bench of NIRC in Appeal No 12A(18)/2021 – S are set aside. The grievance Petition filed by the Petitioner stands allowed, resultantly the impugned dismissal order dated 25.09.2019 stands set aside being illegal, void and issued in violation of law. The Petitioner is restored in service with all back benefits from the date of dismissal to reinstatement in service as no proof was brought on record that the Petitioner was engaged in any other job during the intervening period. From the record so far made available by the parties for perusal of this Court, it sufficiently demonstrated that the date of Birth of the Petitioner is year 1968. However, the Respondent Company is at liberty to conduct an inquiry afresh and if during enquiry tangible material comes on record to establish that the actual date of birth of Petitioner is 1961, he shall be retired from services by granting him service benefits and back benefits of the intervening period as ordered.
This Petition stands disposed of in above terms.

**JUDGE**

**JUDGE**

Asghar/P.A