ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Constitutional Petition No. D-1356 of 2025
(Gul Zada versus National Industrial Relations Commissioner & others)

Date	Order with signature of Judge

Before:-
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order: 15.4.2026

Mr. Ghulam Sarwar Chandio advocate for the petitioner
Ms. Wajiha Mehdi, Assistant Attorney General
Mr. Arshad Mehmood advocate for respondents No.2 and 3
Mr. Abdus Samad Khan, Law Officer, NADRA

O R D E R

Adnan-ul-Karim Memon, J. Petitioner Gul Zada has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking following relief: -

> ***a) To declare that the order dated 31.12.2024 dismissing the grievance petition of the petitioner without hearing particularly when it was not fixed for hearing is illegal, unlawful and not sustainable in the law.***
>
> ***b) To further declare that the impugned order dated 20.02.2025 passed by the Full Bench NIRC is also illegal, unlawful and against the principles of natural justice.***
>
> ***c) To set aside both the impugned orders dated 31.12.2024 passed by the Single Member, NIRC and dated 20.02.2025 passed by the Full Bench NIRC and remand the matter to the learned Single Member for deciding the grievance petition No.4B(139)/2024-K on merits after recording evidence of the parties.***

2. The petitioner was employed as a *Door Man* at the Pearl Continental Hotel, Karachi (Respondent No.3), a trans-provincial establishment operating under Respondent No.2, and thus governed by the Industrial Relations Act, 2012 and the Industrial & Commercial Employment (Standing Orders) Ordinance, 1968. It is averred that he has also been actively involved in lawful trade union activities and serves as the General Secretary of the Pearl Continental Hotel National Labour Union. It is submitted that at the time of his employment, the petitioner possessed no documentary proof of his age except a National Identity Card (NIC), in which his date of birth was erroneously recorded as 1964. Subsequently, upon approaching NADRA for correction, he was advised to provide authentic proof. The petitioner appeared before a Medical Board, which assessed his year of birth as 1967, and NADRA accordingly issued a CNIC reflecting this correction. Later, the petitioner retrieved his school leaving certificate, issued on 30.10.1980, which records his correct date of birth as 15.04.1969. It is added that the petitioner submitted the corrected CNIC and educational certificate to the employer and requested that the change be communicated to the Employees' Old-Age Benefits Institution (EOBI) to avoid complications regarding his pension. Despite submitting an application and a grievance notice, the respondent management failed to take any action or forward the necessary communication to EOBI. Aggrieved, the petitioner filed Grievance Petition No. 48(139)/2024-K before the National Industrial Relations Commission

(NIRC), along with a stay application to restrain the respondents from retiring him based on the incorrect date of birth. The learned Single Member admitted the petition and granted interim protection. However, the petition was subsequently dismissed on 31.12.2024 on an application for ante-dating, without prior notice to the petitioner and without affording an opportunity of hearing, even though the matter had been fixed for 07.01.2025. The petitioner challenged this order before the Full Bench of the NIRC under Section 58 of the Industrial Relations Act, 2012, but the appeal was dismissed on 20.02.2025 without proper consideration of the material on record. The petitioner asserts that both impugned orders violate the principles of natural justice, particularly the rule of *audi alteram partem*, and that the dispute regarding his age required recording of evidence rather than summary dismissal. Additionally, the petitioner submits that there is no statutory provision mandating retirement at the age of 60 years under the applicable labour laws or his terms of employment. He further contends that due to his active role in trade union activities, including prior litigation filed by the "PC Hotel Workers Union" to prevent mass termination of employees, the respondents acted with mala fide intent and discriminatory treatment by not permitting him and two other union office bearers to resume physical duties, although salaries were partially paid.In support of his contentions, learned counsel for the petitioner has relied upon the cases of *Vera v. Kazi and Kazi Ltd.* (PLD 1990 Supreme Court 435), *A.E.G. Telefunken Pakistan (Pvt.) Ltd. v. Sindh L.A.T.* (1989 PLC 525) and *Mehmood v. Sindh Alkalis Ltd.* (1986 PLC 70). He prayed to allow this petition.

3. The respondents' counsel opposed the grievance petition, contending that the petitioner's date of birth recorded in the employer's and EOBI's records was based on the NIC provided at the time of his appointment and could not be altered without proper authorization. He maintained that any correction in EOBI records required formal verification and communication from the employer based on authentic and legally admissible documentation. The respondents counsel further supported the impugned order of the learned Single Member, asserting that the grievance petition was rightly dismissed and that the subsequent appeal before the Full Bench was also decided in accordance with law. He denied any mala fide intention or discriminatory treatment against the petitioner and contended that all actions were taken strictly in compliance with the applicable rules and regulations governing employment in terms of condition of service of employees and retirement. In support of his contentions, learned counsel for respondents No.2 and 3 has relied upon the cases of *Shahid Ahmed v. Oil and Gas Development Company Ltd.* (2014 SCMR 1008) and *Muhammad Tariq v. University of Peshawar through Vice Chancellor* (2004 PLC (C.S.) 1162). He prayed to dismiss the petition.

4. Learned counsel for the petitioner in rebuttal submitted that the respondents' objections do not sustain legal scrutiny. The impugned orders were were passed in violation of the principles of natural justice and without adjudicating the factual controversy on evidence. The petitioner's case squarely warrants determination on merits by the competent forum after recording evidence.

5. After hearing the learned counsel for the parties and perusing the material available on record, it transpires that the core controversy revolves around the legality and propriety of the orders dated 31.12.2024 passed by the learned Single Member, National Industrial Relations Commission (NIRC), and 20.02.2025 passed by the learned Full Bench, NIRC.

6. The petitioner, a long-serving employee of a hotel, filed a grievance petition under the Industrial Relations Act, 2012 seeking correction of his date of birth from 1964 to 31.12.1967 on the basis of a revised CNIC issued by NADRA, and to restrain the employer from retiring him on the basis of the earlier recorded date. He submitted that being illiterate, his date of birth had been wrongly recorded at the time of employment, and that after obtaining a corrected CNIC and medical assessment, he requested the management and EOBI to update their records, which was not done. The respondent opposed the petition, arguing that the petitioner himself had provided the 1964 date at the time of his appointment in 1985 and continued in service for over three decades without objection. It was contended that the request for correction, made at the verge of retirement, was legally untenable as settled law prohibits alteration of date of birth after a long lapse of time. The learned Single Bench of NIRC, after hearing the parties, held that the petitioner had remained negligent throughout his service and raised the issue only upon reaching superannuation. Relying on settled principles laid down by the superior courts, it was held that date of birth recorded at the time of entry into service attains finality and cannot be altered belatedly. Consequently, the petition was dismissed as not maintainable. In appeal, the petitioner challenged the order on grounds of violation of natural justice and lack of proper hearing. However, the Full Bench of NIRC, upon examining the record, found no merit in the appeal. It observed that the petitioner had worked for nearly 28 years without disputing his recorded age and only sought correction to extend his service. The Bench further noted discrepancies in his conduct, including obtaining a medical certificate from a distant location instead of following proper legal procedure through a competent forum. Concluding that the attempt to change the date of birth was an afterthought and not bona fide, the Full Bench upheld the impugned order and dismissed the appeal.

7. The record reflects that the petitioner had filed Grievance Petition No. 48(139)/2024-K seeking correction of his date of birth in the employer's and

EOBI records on the basis of a corrected CNIC and a subsequently retrieved school leaving certificate. The learned Single Member had earlier admitted the petition and granted interim protection, fixing the matter for 07.01.2025. However, the grievance petition was dismissed on 31.12.2024 on an application for ante-dating, without prior notice to the petitioner or his counsel and without affording them an opportunity of hearing. Such a course of action is in clear violation of the settled principles of natural justice, particularly the rule of *audi alteram partem*, which mandates that no person should be condemned unheard. The dismissal of the petition on a date not previously fixed, and without service of notice regarding the application for ante-dating, deprived the petitioner of a fair opportunity to present his case. It is a well-established principle that even if a court or tribunal possesses the jurisdiction to decide a matter, the exercise of such jurisdiction must conform to the requirements of fairness and due process. Furthermore, the dispute relating to the petitioner's date of birth involves controverted questions of fact, including the evidentiary value of the corrected CNIC, the medical board's assessment, and the school leaving certificate. Such matters necessitate the recording of evidence and cannot be adjudicated summarily. At the most, the interim relief could have been reconsidered; however, outright dismissal of the grievance petition without a full-fledged trial was not legally sustainable.

8. The learned Full Bench, while dismissing the petitioner's appeal on 20.02.2025, failed to address these fundamental jurisdictional and procedural irregularities. The appellate forum was duty-bound to examine whether the order of the Single Member suffered from violations of due process. Its failure to do so renders the impugned appellate order equally unsustainable in law.

9. The arguments advanced by the learned counsel for the respondents are misconceived, legally untenable, and fail to address the core jurisdictional and procedural infirmities involved in the present case for the reason that the respondents' reliance on the entry of date of birth in the service record at the time of appointment as being final and unalterable is not absolute in law. While it is settled that belated attempts to change date of birth are generally viewed with caution, this principle is not rigid or mechanical. It does not operate to exclude the jurisdiction of the competent forum where the employee produces *cogent and documentary evidence* demonstrating that the recorded date is factually incorrect. In the present case, the petitioner has placed on record a corrected CNIC issued by NADRA after due verification, a medical board report, and a school leaving certificate documents which prima facie require adjudication on merits rather than outright rejection. Secondly**,** the reliance placed by the respondents on the principle of finality of service records is misplaced in the present context, as the petitioner is a "workman" governed under the Industrial Relations Act, 2012,

where disputes of this nature are to be resolved through a fair, fact-finding process. Unlike rigid administrative rules applicable to civil servants, labour jurisprudence recognizes that factual controversies regarding service conditions must be determined on evidence. Therefore, the respondents' attempt to invoke a strict bar without inquiry defeats the statutory scheme of the IRA, 2012. Thirdly, the contention that correction in EOBI record cannot be effected without employer's authorization is equally without legal force. Such a stance effectively allows the employer to act as a final arbiter of a disputed factual issue, which is not contemplated under law. The proper course is for the competent forum to determine the correct factual position and then direct rectification of records accordingly. Administrative refusal cannot override adjudicatory determination. The respondents' reliance on case law relating to civil servants is clearly distinguishable. The cited judgments, including *2014 SCMR 1008* and *2004 PLC (C.S.) 1162*, pertain to government service where strict statutory service rules govern age determination and retirement. The present case arises in an industrial employment framework, where equitable considerations and procedural fairness are paramount, and where summary dismissal without evidence cannot be justified. The assertion that the petitioner approached NADRA or medical authorities belatedly to extend his service tenure is a matter of inference and cannot substitute for evidence. Such a finding could only be recorded after a proper trial where documents are tested through cross-examination. The summary dismissal of the grievance petition without notice or hearing renders the entire process fundamentally defective. The allegation of mala fide based on alleged timing of correction is speculative and unsupported by record. Even if delay is assumed, delay alone does not extinguish the jurisdiction of the forum where a continuing legal injury is alleged, particularly affecting pensionary rights under EOBI.

10. So far as the age of retirement under Labour Law is concerned under the scheme of the Industrial Relations Act, 2012 and the settled labour jurisprudence in Pakistan, the age of retirement is not governed by any rigid or universally applicable statutory provision as is the case in civil service laws. Instead, the employer–workman relationship is primarily regulated by the terms and conditions of employment, applicable Standing Orders where certified and operative, or the internal service policy of the establishment. Consequently, retirement in the industrial and commercial employment sector is essentially contractual or policy-driven in nature, and not automatically triggered by operation of law upon attaining any fixed age such as 60 years, unless such age is expressly provided in the governing service rules or employment contract, which contract of the petitioner with respondent has not been placed on record.

11. It is a well-settled principle that where the terms of employment, certified Standing Orders, or applicable HR policies clearly stipulate a retirement age, such stipulation governs the service relationship and is enforceable between the parties. However, in cases where the employment framework is silent on the age of retirement, no automatic statutory retirement at the age of 60 can be presumed. In such situations, the continuation or cessation of employment must be determined strictly in accordance with the established service conditions, and any ambiguity therein is generally construed in favour of continuation of employment, unless lawfully brought to an end through due process.

12. The Employees' Old-Age Benefits Institution Act, 1976 also provides for pensionable age, generally treated as 60 years for the purpose of pension entitlement. However, it is equally well-settled that the EOBI retirement age is relevant only for pensionary benefits and does not, by itself, bring about automatic termination of employment. The employer is still required to pass a valid and lawful order of retirement or separation in accordance with the applicable terms of service. Judicial precedents have consistently held that entries or records maintained by EOBI cannot, on their own, be treated as conclusive or determinative proof of the actual retirement age for the purpose of service termination.

13. For automatic retirement to lawfully operate, there must exist a clear and unambiguous legal foundation, such as an express statutory provision, a specific contractual clause, certified Standing Orders, or a consistently applied and binding employer policy. In the absence of any such governing instrument, retirement cannot be presumed or enforced mechanically at any particular age. Where no such clear framework exists, the employer is required to determine the matter in accordance with due process, particularly when the question of age itself is disputed.

14. It is further a settled principle of law that where the date of birth or age of an employee is disputed, the employer cannot rely upon a single entry in isolation, such as an old NIC or service record, as conclusive without proper adjudication. Any inconsistency between documentary evidence such as CNIC, educational certificates, medical board reports, or other authentic records raises a triable question of fact which must necessarily be resolved through an appropriate fact-finding process before a competent forum. Such disputes cannot be decided unilaterally or summarily by the employer.

15. The jurisprudence governing labour matters further emphasizes that industrial disputes is rooted in fairness, due process, and proper adjudication of factual controversies. Employment rights cannot be curtailed on mere presumptions or administrative assumptions without affording an opportunity of

hearing and without conducting a proper inquiry where required. In cases of doubt or conflicting evidence, the benefit of fair adjudication and proper evidentiary assessment assumes central importance.

16. Accordingly, it is well recognized that under the Industrial Relations framework, there is no automatic statutory retirement at the age of 60 years unless the same is clearly provided in the terms of service or applicable standing orders. Even where such an age is prescribed, its application must be based on an accurate and legally established date of birth, and not on a disputed or unverified record. Where the question of age itself is under dispute and supported by conflicting documentary evidence, retirement cannot be enforced in a mechanical manner, and the matter must be adjudicated through a proper evidentiary process.

17. In the present case as well, the petitioner's date of birth is not only disputed but is supported by multiple documentary sources, including a corrected CNIC, educational record, and medical board assessment. In such circumstances, no automatic retirement can lawfully be triggered unless and until the factual controversy regarding age is finally determined by the competent forum. Any action taken on the basis of an unverified or disputed date of birth would therefore be premature, legally unsustainable, and liable to be set aside.

18. Under the Industrial Relations Act, 2012, and allied labour jurisprudence the relationship between employer and workman is primarily governed by terms of appointment / contract of employment Standing Orders where applicable certified standing orders or company HR policies Retirement age is therefore contractual or policy-based, not automatically statutory Hence, retirement at age 60 is not automatic unless expressly provided in service rules or terms of employment. The settled principle is **i**f the contract of employment or standing orders prescribe a retirement age, that age governs. If not, retirement must be determined by service conditions or employer policy. Therefore If employer rules say "60 years retirement" it applies If silent no automatic statutory retirement at 60 Any ambiguity must be interpreted in favour of continued employment unless lawfully terminated The Employees' Old-Age Benefits Institution Act, 1976 (EOBI Act) provides pension benefits at age 60, but EOBI age is for pension eligibility only It does not automatically terminate employment employer must still issue a valid retirement order under service conditions Courts have repeatedly held that EOBI record is not conclusive proof of retirement age for termination of service **f**or "automatic retirement" to operate, the following must exist: Express statutory provision or clear contractual clause or binding certified standing orders or established and consistently applied employer polic**y.** In absence of these retirement cannot occur automatically, employer must determine age through proper process if disputed where date of birth is disputed i.e. the employer cannot treat one record e.g., NIC or old HR file as final without adjudication Any conflicting documents CNIC, medical board, school certificate create a triable

issue of fact Such dispute must be resolved through competent forum. Therefore, retirement cannot be enforced mechanically where age itself is sub judice or contested. courts have consistently held in labour matters that Industrial justice requires fair hearing and fact-finding employment rights cannot be terminated on summary presumptions benefit of doubt in service ambiguity often tilts toward continuation of employment until lawful determination. Under the Industrial relations framework, there is no automatic statutory retirement at the age of 60 years unless specifically provided in the terms of service or applicable standing orders. Even where a retirement age is mentioned, its application must be based on accurate and legally determined date of birth. In cases of dispute regarding age, retirement cannot be effected mechanically and the matter must be adjudicated through a proper evidentiary process." In this case, Petitioner's date of birth is disputed and supported by multiple documents CNIC, school record, medical board. Therefore, no automatic retirement can be triggered until final determination by the NIRC any retirement action based on disputed data would be premature and void

19. In view of the foregoing reasons, it is noticed that both impugned orders suffer from procedural impropriety, violation of natural justice, and failure to exercise jurisdiction in accordance with law. Consequently, the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, is rightly invoked.

20. Accordingly, this Constitutional Petition is allowed, and it is hereby ordered that the order dated 31.12.2024 passed by the learned Single Member, NIRC, dismissing the grievance petition of the petitioner, is declared illegal, unlawful, and of no legal effect for having been passed in violation of the principles of natural justice. The order dated 20.02.2025 passed by the learned Full Bench of NIRC, is also unsustainable, as it failed to rectify the jurisdictional and procedural defects in the order of the Single Member. Both impugned orders are set aside, and the matter is remanded to the learned Single Member of NIRC, for decision of Grievance Petition No. 48(139)/2024-K on merits, after affording due opportunity of hearing to all parties and, if necessary, after recording evidence regarding the petitioner's date of birth. The learned Single Member is directed to decide the grievance petition expeditiously, preferably within a period of three months from the date of receipt of this order. Until the final decision of the grievance petition, the respondents No. 2 and 3 are restrained from taking any adverse action against the petitioner on the basis of the disputed date of birth. However, there shall be no order as to costs.

JUDGE

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