

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

C.P No. D-1657 of 2023

[Qamaruddin Shaikh v. Province of Sindh & others]

Before:

Mr. Justice Arbab Ali Hakro

Mr. Justice Riazat Ali Sahar

Petitioner : **Qamaruddin Shaikh** through
Mr.Farhad Ali Abro, Advocate.

Respondents No.1&2 : Through Mr. Rafique Ahmed Dahri,
Assistant A.G. Sindh.

Respondents No.3&4. : Through Mr. Muhammad Arshad
S.Pathan, Advocate.

Date of Hearing : **20.05.2025**

Date of Decision : **08.08.2025**

JUDGMENT

RIAZAT ALI SAHAR. J., - Through the instant constitutional petition, the petitioner has assailed the legality of the impugned letter dated 17.08.2018 issued by respondent No.2, whereby the petitioner was directed to be retired from service with effect from 03.11.2018 on the premise that his date of birth was 04.11.1958. The petitioner prayed for quashing of the impugned letter and all consequential actions, contending that his actual and correct date of birth is 04.11.1967 as recorded in his CNIC and Service Book; thus, his date of superannuation falls on 03.11.2027. The petitioner has prayed as under:-

- (a) That this Honourable Court may be pleased to quash/set-aside impugned letter dated 17.08.2018 and its subsequent action being illegal, malafide, arbitrary, corum non judice, void and ab-initio;

- (b) To direct the respondents to allow the petitioner to perform his duties at his previous post alongwith all benefits till the date of his retirement viz. 03.11.2027;
- (c) Petitioner may be dealt with the judgment dated 16.02.2022 passed in Civil Petition No.677-K of 2019 (Re-Manzar Zahoor v. Lyari Development Authority & another).
- (d) Any other relief(s) which this Honourable Court may deem fit and proper in the circumstances of the matter.

2. The petitioner claimed that he was born on **04.11.1967** at Hyderabad and due to the illiteracy of his parents; his date of birth was erroneously recorded as **04.11.1964** in the admission register of Government Primary School Sohrab Khan Magsi, Jacobabad. Later, upon admission in Ghulam Muhammad Bhurgari Government Urdu Primary School, Hyderabad, the incorrect date was carried forward. Subsequently, when he was admitted to Government High School (Boys), Risala Road, Hyderabad, the Board of Intermediate and Secondary Education, Hyderabad erroneously recorded his date of birth as 04.11.1958. The petitioner averred that despite issuance of School Leaving Certificates carrying incorrect dates, his parents and he repeatedly sought correction of the date of birth. On 12.02.1980, he submitted his first formal application to the Director School Education, Hyderabad Region, followed by letters/reminders dated 08.12.1986, 14.09.1992, 31.12.2007 and 17.04.2013, but no corrective action was taken. The petitioner has further averred that he was appointed as Assistant Land Management Officer (ALMO, BPS-16) in Hyderabad Municipal Corporation (HMC) vide order dated 07.09.1989 issued by the Mayor, HMC. He contended that after completion of all formalities, his Service Book was prepared wherein his date of birth was correctly mentioned as 04.11.1967. He further contended that after establishment of NADRA, his CNIC and Family Registration Certificate also reflected his correct date of birth. The petitioner alleged that to his utter surprise, respondent No.2, acting at the behest of his rivals, issued the impugned letter dated 17.08.2018 directing respondent No.3 to issue notification of his

retirement within three days. According to the petitioner, such action was taken without notice, without hearing and without even seeking clarification from the parent department (HMC), in violation of Article 10-A of the Constitution and principles of natural justice. He asserted that he is not a civil servant within the meaning of Article 212 of the Constitution, rather he is a public servant employed by HMC under Section 80(1)(c) of the Sindh Local Government Act, 2013, which vests control over service matters in the Mayor, not respondent No.2. The petitioner further contended that his elder sister, Mst. Kausar Parveen, was born in 1958, which biologically rules out his birth in the same year. His bona fides are allegedly fortified by the fact that since 1980, he has persistently sought correction of his date of birth. Reliance is placed on Rule 12-A of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, which provides that the date of birth recorded at the time of entering service, is final and binding. Reference is also made to Supreme Court's judgment **dated 16.02.2022 in Civil Petition No.677-K of 2019 (Manzar Zahoor v. Lyari Development Authority & another)**.

3. Respondents Nos.3 and 4 filed their joint para-wise comments, wherein they have raised the following preliminary and factual objections:

- (i). The petition is not maintainable as the petitioner earlier filed C.P. No.D-2625/2018 challenging the same impugned letter, which was dismissed as withdrawn on 18.10.2023. Filing a fresh petition on 25.10.2023 amounts to re-litigation and abuse of process.
- (ii). The petitioner's actual date of birth is 04.11.1958, duly recorded in his Matriculation Certificate, initial appointment documents, and service profile. The CNIC and Service Book entries showing 1967 are alleged to be manipulated and prepared by the petitioner by misusing

his influence as Administrator HMC and Korangi, Karachi.

- (iii). The petitioner's claim for alteration of date of birth has already been dismissed by competent courts:
- Civil Suit No.513/2018 was dismissed,
 - Civil Appeal No.23/2019 was dismissed, and
 - Civil Revision No.158/2019 was discharged on 22.02.2024.
- (iv). Under Rule 12-A of Civil Servants (APT) Rules, 1973, any correction of date of birth must be sought within two years of appointment. Reliance is placed on 2015 SCMR 456; 2014 SCMR 1723; 2007 SCMR 66; and 1998 SCMR 1498, holding that alteration at the verge of retirement is impermissible.
- (v). Acceptance of the petitioner's claimed date of birth (1967) would imply that he passed Matriculation in 1978 at the age of 11 years, which is impossible.
- (vi). The change of date of birth in NADRA records in 2017, just one year before his retirement, is alleged to be illegal and collusive. It is further contended that HMC is not his parent department, as he originally belonged to the Health Department.

4. Learned counsel for the petitioner contended that the petitioner was wrongly retired on 03.11.2018 despite his correct date of birth being 04.11.1967, as duly reflected in his CNIC, FRC and Service Book. He has contended that the Matriculation Certificate mentioning 04.11.1958 is the result of an initial clerical mistake caused by the illiteracy of his parents and the impugned letter dated 17.08.2018 was issued without affording any notice or hearing; thus, violating Article 10-A of the Constitution and the principles of natural justice. He has further contended that the petitioner had been persistently seeking correction of his date of birth since 1980, establishing his *bona fides* and negating any allegation of *mala fide*

intent. Learned counsel further contended that the petitioner, being a public servant under HMC, is not governed by Article 212 of the Constitution and under Section 80(1)(c) of the Sindh Local Government Act, 2013, only the Mayor has authority over HMC employees, not respondent No.2. He has further contended that the elder sister of the petitioner was born in 1958, making it biologically impossible for him to be born in the same year. He has placed reliance on Rule 12-A of the Civil Servants (APT) Rules, 1973 and the Honourable Supreme Court's judgment dated 16.02.2022 "***Manzar Zahoor v. Lyari Development Authority and another***" passed in **Civil Petition No.677-K of 2019**, asserting that the Service Book entry of 04.11.1967 is final. The impugned action is alleged to be *mala fide*, arbitrary and politically motivated, causing grave hardship and therefore the petitioner is entitled to continue in service till 03.11.2027 with all benefits.

5. Conversely, learned A.A.G. Sindh has supported the impugned action and contended that the petitioner's actual date of birth is 04.11.1958 as per his Matriculation Certificate and initial service record, which is conclusive and final. According to him, Rule 12-A of the Civil Servants (APT) Rules bars any alteration after two years of appointment and the petitioner's belated claim, raised decades later, is hit by laches. The impugned retirement order is a lawful consequential action based on authentic records and no violation of statutory provisions or *mala fide* is established. Learned A.A.G. further contended that writ jurisdiction cannot be invoked to reopen settled service matters, especially after retirement; hence, the petition being devoid of merits is liable to be dismissed.

6. Learned counsel for the respondents No.3&4 has contended that the petition is not maintainable as it is a second attempt filed after withdrawal of C.P. No.D-2625/2018, amounting to abuse of process. He contended that the petitioner's actual date of birth is "04.11.1958", duly recorded in the Matriculation Certificate, initial service record and appointment documents, whereas the entries in the Service Book and CNIC showing "1967" are forged and

manipulated, prepared by misusing his influence as Administrator HMC. The petitioner has already exhausted all forums, including a dismissed Civil Suit, Civil Appeal, and Civil Revision. According to learned counsel, Rule 12-A of the Civil Servants (APT) Rules, 1973, bars any alteration in date of birth after two years of appointment, a principle consistently upheld in **2015 SCMR 456, 2014 SCMR 1723 and 2007 SCMR 66**. He contended that the NADRA allegedly altered his date of birth in 2017, merely a year before retirement, without any lawful authority or Court decree. He has further contended that the claim is factually improbable, as if the year of the date of birth of the petitioner is accepted as “1967”, it would imply that the petitioner passed Matriculation in “1978” at the age of “**11 years**”. He has further contended that the petitioner originally belonged to the Health Department, which was not referred and hence, HMC had no authority to unilaterally alter his service record. Since the issue of change of date of birth cannot be undertaken in writ jurisdiction and the petitioner approached this Court after retirement, as such, the petition is barred by laches and is liable to be dismissed with exemplary costs.

7. Upon hearing the learned counsel for the petitioners, the learned A.A.G. Sindh for official respondents, learned counsel for the respondents and perusal of the available record, including the case law cited at bar, we find that the first and foremost question pertains to the correct date of birth of the petitioner. The record reveals that at the time of his induction into service, the petitioner produced his Matriculation Certificate, which carries his date of birth as 04.11.1958. The Matriculation Certificate is a primary and contemporaneous document, which the courts have consistently held to carry superior evidentiary value in determining age for service purposes. The petitioner’s reliance on his CNIC, FRC, and Service Book to establish his date of birth as 04.11.1967 is inappropriate, as such, documents were either prepared long after his appointment or were susceptible to manipulation. The Service Book was opened after his appointment and cannot override the original entry based on the

Matriculation Certificate. Further, the claim that the petitioner's elder sister was born in 1958 and hence, he could not also have been born in 1958 is unsubstantiated, as no authentic birth certificate or contemporaneous record of the sister has been produced.

8. It would be pertinent to observe that **acceptance of the petitioner's claimed date of birth as 1967** would inevitably lead to an improbable and almost absurd inference that **he passed his Matriculation examination in 1978 at the age of merely 11 years**, which defies normal academic progression and lends considerable credence to the respondents' contention regarding manipulation of records. The Matriculation Certificate, being a primary and contemporaneous document prepared at the relevant time, carries superior evidentiary value for determining age in service matters, as repeatedly recognized by the superior Courts. The Honourable Supreme Court, in *The Executive Director (P&GS) State Life v. Muhammad Nisar (2025 SCMR 249)*, has categorically reaffirmed that the date of birth once recorded at the time of induction into service, on the basis of such primary and confirmatory documents, attains finality and cannot subsequently be altered except to rectify a clerical error. It was further held that belated attempts to alter the date of birth, especially at the verge of retirement, are presumed to be an afterthought and cannot override original contemporaneous records. Thus, in the absence of any lawful judicial decree or unimpeachable evidence rebutting the Matriculation Certificate, no subsequently prepared document, including the Service Book or CNIC, can be given preference for altering or disputing the petitioner's date of birth. The basis of claim of the petitioner on the date of birth as 04.11.1967 is denied by the respondents in presence of proper date of birth as recorded in the Matriculation Certificate.

9. The petitioner has contended that the impugned letter was issued in violation of Article 10-A and the principles of natural justice, as no prior notice or hearing was given. There is no dispute that principles of natural justice are integral to administrative

action; however, where no factual inquiry is required and the action flows automatically from the service record, the requirement of hearing may not be attracted. In the present case, the petitioner's date of birth as 04.11.1958 was already part of his official service profile. His retirement was a consequential action, and thus, the plea of violation of Article 10-A is misconceived.

10. The petitioner, appointed in 1989, first formally challenged his date of birth through litigation in 2018, almost three decades later and just before his retirement. Rule 12-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 expressly bars alteration of date of birth after two years of appointment and the Honourable Supreme Court has consistently held that belated attempts to alter service records, particularly at the verge of retirement, are presumed to be afterthoughts, barred by laches and contrary to public policy. In *Muhammad Khaliq Mandokhail v. Government of Balochistan* (2021 PLC (C.S.) 570), it was reiterated that any correction must be sought within the prescribed time frame and supported by unquestionable and unimpeachable evidence, not by self-serving or managed documents. The petitioner, having already exhausted civil remedies which were decided against him and having withdrawn earlier C.P. No.D-2625/2018, now seeks the same relief through re-litigation. His belated claim, based on documents prepared long after induction into service and without compliance with mandatory procedural safeguards, is legally untenable and amounts to an attempt to manipulate the service record, which cannot be sustained in law. Furthermore, so far the petitioner has alleged *mala fide* on the part of respondent No.2, suffice to say that except for making bald assertions, no cogent evidence has been produced to substantiate these allegations. *Mala fide* cannot be presumed and must be established through concrete evidence.

11. As far as the reliance placed by the petitioner on the judgment of the Honourable Supreme Court dated 16.02.2022, rendered in *Manzar Zahoor v. Lyari Development Authority*

and another (Civil Petition No.677-K of 2019) is concerned, we have carefully examined the same and find it distinguishable on facts. In the cited case, the petitioner had instituted Civil Suit No.210 of 2013 against the Board of Secondary Education Karachi, Board of Intermediate Education Karachi and Lyari Development Authority, seeking a declaration and correction of his date of birth in the Secondary School Certificate, along with consequential directions against the respondents. Conversely, the circumstances of the present case are materially different, as the petitioner, despite having already exhausted all available civil remedies by filing Civil Suit No.513 of 2018 (dismissed), Civil Appeal No.23 of 2019 (dismissed), and Civil Revision No.158 of 2019, has now approached this Court through the present constitutional petition, which clearly amounts to re-litigation and an abuse of process.

12. For what has been discussed above, we hold that the petitioner's correct date of birth is **04.11.1958** as per his Matriculation Certificate and initial service record. The impugned retirement order dated 17.08.2018 is a consequential action based on his recorded date of birth in the Matriculation Certificate and does not violate Article 10-A of the Constitution. The petition is barred by laches, hit by Rule 12-A of Civil Servants (APT) Rules and amounts to re-litigation. No case of *mala fide* or violation of statutory provisions is made out. Accordingly, the petition being devoid of merits is hereby **dismissed** along with pending application(s), if any. There shall be no order as to costs.

JUDGE

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