

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D-1068 of 2016

Mr. Ameer-Uddin Advocate for the Petitioner

Mr. Muhammad Asghar Malik Advocate for the Respondents.

Mr. Shaikh Liaquat Hussain, Assistant attorney General.

Date of hearing: - 26.03.2018

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - Through the instant petition, the Petitioner seeks setting aside the Impugned office order dated 10.07.2015, whereby she stood retired from service of the Pakistan Television Corporation Limited/ Respondent-PTV. Petitioner also seeks declaration to the effect that her actual date of birth, recorded by the Respondent-PTV, at the time of her entry into the service was 07.03.1960 and not 25.04.1956.

2. Brief facts of the case as per averments of the parties are that the Petitioner had joined Pakistan Television Corporation (PTV) on 14.04.1984. Petitioner has submitted that her date of birth was wrongly entered in her Secondary School Certificate, NIC and Domicile Certificate as 25.04.1956 instead of 07.03.1960. Petitioner has further submitted that at the time of joining the service of PTV on 14.4.1984, she filed an affidavit of her mother to the effect that Petitioner's actual date of birth is 07.03.1960 and not 20.4.1956, on the premise that there was no one to look after

her family due to prolong illness of her husband. Petitioner has asserted that this factual position was duly acknowledged by the Respondent-PTV and her actual date of birth i.e 07.03.1960 was entered in her service book. Petitioner has submitted that Rule 5.09 of Pakistan Television Corporation Ltd Employees Service Rules protects her service. Petitioner further averred that she is in possession of documentary evidence i.e PTV service record, EOBI's cards, PTV medical card, PTV special identity card, Seniority list, NIC, CNIC, Smart card and Passport etc., which support her stance that her actual date of birth is 07.03.1960 and not 20.4.1956. As per the Petitioner, the Respondent No.4/ the Admin & Personnel Manager has issued a letter Ref: No. P/PTC/P-11264-4/269 dated 11.11.2013 and has certified that as per Respondent No.1's record, the date of birth of the Petitioner is 07.03.1960. It is further submitted by the Petitioner that, according to the seniority list issued by the Competent Authority of PTV the date of retirement of the Petitioner is 06.03.2020 and not 24.4.2016; it is further added by the Petitioner she was shocked when an office order Ref; No. HP/P-1/483/4254 dated July 10th 2015, sent by the Respondent No.2, it was mentioned that the Petitioner will stand retired from service of the Respondents w.e.f 24.04.2016 on attaining the age of superannuation in terms of Clause No.5.28 of the PTV Service Rules; the Petitioner has submitted that she received a copy of letter dated November 03, 2015 issued by Respondent No.2/Deputy Controller administration & Personnel-II addressed to Respondent No.4/personnel Manager, T.V Centre Karachi, wherein a wrong impression was given that as if the Petitioner had asked for the amendment of her date of birth as

07.03.1960 instead of 25.04.1956. The Petitioner received another letter dated 29.12.2015 from Respondent No.4 / Admin & Personnel Manager, informing her that the service certificate issued on 11.11.2013, has been cancelled and withdrawn, being wrong date of birth mentioned by mistake. Petitioner being aggrieved by and dissatisfied with the issuance of Impugned office order dated 10.7.2015 has filed the instant Petition on 22.2.2016.

3. Upon notice, Respondents filed para-wise comments and denied the allegations.

4. Mr. Ameer-Uddin, learned counsel for the Petitioner has contended that the act of the Respondents is against the law; that once the date of birth of the Petitioner has been entered in the service record at the time of her initial appointment that would be treated final to consider and determine her age of superannuation; that the Respondent No.2 with malafide intention and in violation of Rule 5.09 of the Service Rules of the Respondent No.1, has attempted to deprive the Petitioner from her fundamental right by substituting her service record by showing date of birth of the Petitioner as 25.04.1956 which has never been recorded/entered in the Petitioner's service book; that the Respondent No.2 has malafidely mentioned in the letter dated 03.11.2015 that the Petitioner had asked for amendment in her date of birth as 07.03.1960 instead of 25.04.1956; that the date of birth of the Petitioner has not been mentioned as 25.04.1956 in her antecedents, therefore, amendment of the date of birth was not called for as depicting by the Respondents; that once her date of birth was recorded in service book, the doctrine of promissory estoppel will be applicable in the case of the Petitioner and the

Respondents cannot be allowed to retract from it under the law; that the Respondents cannot challenge the authenticity of the documents of the Petitioner, related to her date of birth after two years from entering into the service of PTV; that the Respondents plea cannot be accepted that they committed irregularity in entering the wrong date of birth of the Petitioner and order for the retirement of the Petitioner on the basis of wrong date of birth; that rule of locus-poenitentiae is applicable to the case of the Petitioner that once a right has accrued in favor of the Petitioner that cannot be taken back. Learned counsel in support of his contention has relied upon the case of Azra Riffat Rana Vs. Secretary, Ministry of Housing and Works Islamabad & others (2008 PLC (C.S) 995 Syed Iqbal Haider Vs. Federation of Pakistan and another (1998 SCMR 1494), Secretary to Government of NWFP Zakat/Social /Welfare Department, Peshawar and another Vs. Sadullah Khan (1996 SCMR 413), Bashir Ahmed Solangi Vs. Chief Secretary, Government of Sindh and 2 others (2004 SCMR 1864). He lastly prayed for allowing the petition.

5. Mr. Asghar Malik, learned counsel for the Respondents has raised the issue of maintainability of the captioned Petition and contended that the Respondents have acted in accordance with law, Rules and Regulations of the Corporation as such they have not violated any fundamental right of the Petitioner, while on the other hand the Petitioner herself had acted with malafide intention; that the date of birth of an employee of PTV is determined in accordance with Clause No. 5.09 of service rules of PTV;; that the letters dated 10.07.2015, 03.11.2015 & 29.12.2015 issued by the Respondents in accordance with PTV Employees

Service Rules on the premise that she herself produced Matric Certificate Old NIC, and Domicile of her Mother at the time of her induction in service of PTV, therefore there is no malafide on part of the Respondents; that the above referred documents prima-facie show that her date of birth has been mentioned in the service record as per documents produced by the Petitioner herself and it does not violate any fundamental right of the Petitioner; that the plea of the Petitioner for determination of her date of birth as 07.03.1960 instead of 25.04.1956 has no merit for consideration; that Bio-Data of the Petitioner submitted by her at the time of her induction shows that her date of birth is 25.4.1956 and subsequently tempered as 7.3.1960, which is malafide action on her part; that the Petitioner herself moved an application on 15.4.1984 that her date of birth may be counted as per affidavit instead of 25.4.1956, which also shows that her actual date of birth is not 7.3.1960. He lastly prayed for dismissal of the instant petition, since in his view the petitioner has approached the Court with unclean hands.

6. We have heard the learned counsel for the parties and have perused the entire material available on record and the case law cited at the bar.

7. In the first place, we would like to examine the issue of maintainability of the captioned Petition under Article 199 of the Constitution.

8. The Pakistan Television Corporation Limited (PTVC) is not a Statutory Corporation but incorporated as a Public Limited Company registered under Companies Act 1913, and its own

Service Rules namely Pakistan Television Corporation Limited Service Rules 1978, published in the Gazette of Pakistan (Extraordinary) on May 25, 1978, it has consistently been followed as a policy since 1977- 78. Pakistan Television Corporation though incorporated as a limited Company yet the Government having controlling shares in it from its inception and it being fully controlled and run by the Government also a Public Service Corporation, hence, perform functions in connection with the affairs of the Federation, a Province, or a Local Authority Functions of the Corporations in nature of the duties required to be performed as 'public services' functioning under control of the Government and not merely powers without any corresponding obligations. It is the Government, which appoints the General Manager or the Managing Director, respectively, of the Corporation and their salaries are paid from public exchequer as such, the High Court has the jurisdiction to interfere in the subject affairs of PTV under its Constitutional jurisdiction.

9. The foremost question in the present proceedings is whether the date of Birth of the Petitioner is 07.03.1960 or 25.04.1956?

10. We have gone through the record, it appears that the Petitioner was appointed on 14.04.1984 and at the time of recruitment, she had submitted copies of the Secondary School Certificate issued by the Board of Intermediate and Secondary Education, Sargodha, NIC and Domicile certificate clearly disclosing her date of birth as "25.04.1956". The Petitioner was mindful of the fact that in the said certificate and other

documents, she mentioned her date of birth as 25.04.1956 instead of 07.03.1960. We have noticed that under Rule 5.09 of Pakistan Television Corporation Ltd Employees Service Rules does not support her case, an excerpt of the same is reproduced as under:-

“5.09: A declaration of age supported by matriculation of certificate or a school leaving certificate or an affidavit made by an applicant at service, shall be deemed to binding on the person who makes it, and no revision of such declaration shall be allowed to be made by him at a later date of any purpose whatsoever.”

11. From the perusal of the above rule position it is crystal clear that the Petitioner has not filed her own affidavit but an affidavit of her mother, which is not the requirement of the law, thus Petitioner can be held responsible that she did not file her case for correction of her date of birth before any forum, within the period of two years from the date of her joining in service as provided under the law, rather two months earlier of her retirement from service, she filed present petition on 22.2.2016 for the above relief. Petitioner on the other hand has failed to give any explanation for such inordinate delay in seeking correction of her date of birth and on the other has not placed on record any material warranting indulgence by this Court in this matter.

12. The credential of the Petitioner, prima-facie show that her actual date of birth is 25.04.1956 and not 07.03.1960. The Petitioner has attempted to convince us that she filed an affidavit of her mother and disclosed to the Respondent-PTV that her date of birth was wrongly entered in the SSC Part II Examination as 25.04.1956, therefore, she by taking advantage of Rule 5.09 of PTV Employees Service Rules had tried to justify her action that

she was never at fault and she did not obtain job on the basis of fake documents; that Respondent-PTV did not object at the time of her initial appointment, therefore they are estopped under the law to raise such objection after more than 30 years. Be that as it may, the question arises that once her date of birth was entered in the SSC Part II Examination and other documents as discussed supra it was incumbent upon the Petitioner to get it corrected in time if she felt to be aggrieved that her date of birth had wrongly been entered in these documents, thus merely filling an affidavit and that also of her mother to claim immunity, which act in our view would not clarify her position.

13. During the course of arguments, we have been informed that the above referred documents are still holding the field and have not been cancelled yet. We are of the considered view that merely acceptance of an affidavit and that also of the mother of the Petitioner by the Respondent-PTV is not sufficient to claim that the Petitioner's date of birth was 07.03.1960 and not 25.04.1956. Petitioner cannot be allowed to circumvent the well settled principle of law that the actual date of birth once recorded cannot be changed, until and unless it is shown that the date of birth was wrongly entered in the qualification certificates of the candidate which should be corrected, if it is so, then it should be within the stipulated time and not otherwise. Petitioner has admitted that her date of birth i.e. 25.04.1956 was mentioned in the SSC Part-II Certificate issued Board of Intermediate and Secondary Education, Sargodha and in NIC and Domicile certificate of Rawalpindi also. Hence these admitted documents could not be discarded when

these are still holding the field to rely upon the documents prepared afterwards.

14. It is a well settled principle of law that once the date of birth of any person is entered in the qualification certificates that would be final and always considered to determine the age of person in service for superannuation i.e. 60 years. We have noticed that the mode of correction in the date of birth of a Government/ Public Servant is provided under Rule 12-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, which is part of the terms and conditions of the service of the Civil/ Public Servant. It has also been well established by now that a Civil/ Public Servant cannot seek alteration in his date of birth at the verge of his retirement or otherwise in a suit and in this respect principles laid down in the case of *Dr. Muhammad Aslam Baloch v. Government of Balochistan* (2014 SCMR 1723) are fully attracted. The Hon'ble Supreme Court of Pakistan in the case of *Ali Azhar Khan Baloch Vs. Province of Sindh* (2015 SCMR 456) has already dealt with the issue of alteration in date of birth.

15. We have perused the Civil Service Regulation No. 171 which deals with the issue of the correction in the date of birth, which explicitly show that the date of birth once recorded in the service book no alteration of the entry should afterwards be allowed, unless an application in that behalf is made by the employee to the concerned quarters within a period of two years of the date on which his service book was opened. In the light of the documents placed on the record by the parties and admission of the Petitioner that the actual date of birth of the Petitioner was not entered by the respondents in her service record, which is a grave

mistake/negligence on the part of the Respondents for which they are liable to account for. The decision rendered by the Honorable Supreme Court of Pakistan in the case of Shahid Ahmed Vs. Oil and Gas Development Company Ltd and others (2015 PLC CS 267) is guiding principle on the issue involved in the present proceedings. Petitioner did not reserve right to seek amendment in her date of birth at the belated stage, when she stood retired from service on 24.4.2016.

16. Reverting to the plea raised by the learned counsel for the Petitioner that the principle of locus poenitentiae would apply in this case, we are of the considered opinion that the principle of locus poenitentiae would not apply in this case because the Petitioner has retired from her service on 24.4.2016 as per her actual date of birth i.e. 25.04.1956 and not 07.03.1960 and her date of birth was not altered by the Respondent No.1 and she remained in service till today as she was not forced by the Respondent-PTV to work for them but the Petitioner continued to receive salary from the Respondent No.1 who paid her. Perusal of record explicitly shows that there are service allegations against the Petitioner that she was paid the remuneration/salary by the Respondent-PTV due to the order passed by this Court on 20.4.2016, which was obtained through misrepresentation of facts. Since the disputed questions of facts are involved in the present matter, therefore, the same cannot be entertained in a Writ Petition by invoking Constitutional Jurisdiction of this Court.

17. We are fortified on this issue by the case law decided by the Hon'ble Supreme Court in the case of the Engineer in Chief

Branch and another Vs. Jalaluddin (PLD 1992 SC 207) and un-reported case of Rauf Akhtar Farooqi Vs. Province of Sindh (Civil Petition No. 45-K 2015) wherein it has been held at para 3 & 4 as follows:-

“3. We are also of the considered view that recovery of the salaries and or other perks from the date of his retirement i.e. 25.10.12 till 03.01.2015 when he relinquished charge are not sustainable. In the first place his date of birth was altered in 1992 by the Competent Authority and secondly a suit was filed by the petitioner before the learned High Court seeking alteration of his date of birth in which interim order were operative and on the basis of such orders, he continued in the office till he relinquished his charge by virtue of impugned judgment, which otherwise, does not direct such an action.”

18. In the light of above dicta laid down by the Hon’ble Supreme Court, it is for the Respondent-PTV to decide the issue whether Respondent No.1 intends to recover the amounts from the Petitioner point for the disputed period of service, which she has received from the Respondent-PTV after 24.4.2016.

19. Thus in the light of the facts of the law mentioned above, we do not see any illegality, infirmity or material irregularity in the Impugned Order dated 10.07.2015 passed by the Respondent-PTV. The case law cited by the learned counsel for the Petitioner are distinguishable from the facts and circumstances of the case.

20. The order dated 10.07.2015 passed by the Respondent-PTV thus is found to be just and proper. The instant Constitution Petition stands dismissed along with the pending application(s).

JUDGE

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