

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

**Mr. Justice Adnan-ul-Karim Memon**

**Mr. Justice Agha Faisal**

**C.P No. D-6548 of 2016**

Petitioner: Bibi Hajra through  
Mr. Ch. Muhammad Ashraf, Advocate.

Respondent No.1: Through Mr. Bashir Ahmed, Advocate.

**Date of hearing: 09.08.2018**

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** The Petitioner has impugned Judgment dated 25.10.2016 passed by the learned Labour Appellate Tribunal Sindh (SLAT) in Cross Appeals No. KAR-68/2015 (re-Bibi Hajra Vs. The Trustees of the Port of Karachi) and Appeal No. KAR- 71/2015, (re- The Trustees of the Port of Karachi Vs. Bibi Hajra) whereby the order dated 25.5.2015 of the Sindh Labour Court No.5 (SLC) directing the Respondent No.1 to allow the Petitioner to serve in the KPT up to 16<sup>th</sup> January 2017 and to pay her salary if withheld after 2013 was set aside the Appeal of the Petitioner was dismissed and the Appeal of the Respondent No. 1/KPT was allowed and grievance application No. 09/2014 filed by the Petitioner before the SLC was dismissed. The petitioner contends that impugned judgment is illegal and passed without application of judicial mind and is liable to be set aside.

2. Brief facts of the case as per averment of the parties are that the petitioner was appointed as Female Peon on 17.07.1995 in KPT/the respondent. The petitioner in her application dated 26.06.1994 mentioned 22.02.1955 her date of birth, which was mentioned in her National Identity card (NIC). On 5<sup>th</sup> July, 1995 the Chief Medical Officer of the KPT assessed her age as 40 years and on that basis her date of birth was recorded as 5<sup>th</sup> July, 1955 in the official record, as a result of which she got benefit of 4 ½ months against her age mentioned in her National Identity Card. On 8<sup>th</sup> November 2012 i.e. after more than 57 years as per her recorded date of birth and more than 51 years of her so called actual date of birth, the petitioner got her date of birth amended as 22<sup>nd</sup> February, 1961 in the record of Union Council Middle Butkhela, District Malakand, KPK, as a result of which she got benefit of 05 years for retirement. Accordingly, she applied for change of her date from 1955 to 22.2.1961 in service record narrating that while her NIC was prepared none of her family members took care of her actual birth date, while she also being illiterate and having no knowledge of repercussions, could not take care of that. Thus, wrong birth date continued in her service record with KPT and when it came to her knowledge on 08.11.2012, and in the month of December, 2013 she got it amended in Union Council record mentioned heretofore and requested the KPT/the respondent for necessary correction in the record; but instead of doing so, they issued impugned notice of retirement of the petitioner, which is against the principles of natural justice and is discrimination as KPT/the respondent have corrected birth dates of many employees, as well as, violation of Article 25 of the

Constitution, 1973 of the Islamic Republic of Pakistan. The petitioner aggrieved of the impugned retirement notice issued to her by KPT, filed grievance Petition No. 09 of 2014 on 22.03.2014 before learned Sindh Labour Court (SLC), Karachi and the learned SLC vide order dated 25.05.2015 partly allowed grievance application of the petitioner and directed the Respondent No. 1/KPT to allow the petitioner to serve in the KPT up to 16th January 2017. The respondent No. 1 and petitioner being aggrieved of and dissatisfied with the said order dated 25.5.2015 passed by learned SLC Karachi, impugned it before the learned SLAT in cross Appeals No. KAR- 68/2015 and KAR- 71/2015 and the SLAT dismissed appeal of the petitioner, while allowed the appeal filed by the respondent No. 1. The petitioner being aggrieved of and dissatisfied with the judgment dated 25.5.2015 64, has assailed the same before this Court through the instant petition filed on 26.11.2016.

3. Mr. Chaudhary Muhammad Ashraf Khan, learned Counsel for the petitioner contended that the impugned order is sketchy, contrary to law and the judgments passed by this Court, as well as, Hon'ble Supreme Court of Pakistan. Hence, the same is liable to be set-aside. He further contended that the learned SLAT has erred in law by giving preference to estimated birth date recorded by it over the date of birth recorded in the legal and proper documents possessed by the petitioner, which were submitted to the Respondent No.1 along with application dated 03.12.2013 and the petitioner has been discriminated due to her trade union activities and affiliation with KPT Workers Union. He further contended that the Petitioner filed the grievance Petition before the

learned SLC, which was disposed vide order dated 25.05.2015, whereby the learned SLC observed that the age of the Petitioner was wrongly assessed by Chief Medical Officer of KPT and in view of the report of the Special Medical Board of Services Hospital Karachi, the SLC held that the petitioner will retire from service on 16.01.2017 and the learned SLAT failed to appreciate the above factum and wrongly dismissed the Appeal of the Petitioner and erred in allowing the Appeal of the Respondent No.1. He continued and narrated that SLAT failed to appreciate the material evidence placed before it by the petitioner in support of her grievance and has committed error while holding that:-

**“In absence of any authentic proof about the actual date of birth the date of birth recorded in the service record, consciously accepted and agreed upon in writing by the worker cannot be allowed to be changed at or near retirement. The SLC allowed extension of two years in service to the worker capriciously without giving any reason”.**

That the learned SLAT has failed to appreciate that the Petitioner continued her service pursuant to the Orders passed by the SLC, which allowed the Petitioner to continue his work; that the learned SLAT has even ignored the fact that Respondent took work from the Petitioner and she is liable to be paid her salary on the basis of Interim Order; that the learned SLAT has committed serious error in law by setting aside the Orders passed by the learned SLC, which is even otherwise is correct and within the parameters of law. He lastly prayed for modification of the impugned Order to the extent of recovery of salary from the petitioner for the work done by her with Respondent No.1 and in support placed reliance on the case of *Karachi Metropolitan Corporation Vs. Rehmat Masih & others (2003 PLC 16) Khawaja Naseeruddin Vs. Chairman, PNSC, Karachi*

*& others (2004 PLC 453), Muhammad Bashir Sulehria Vs. M.C.L. through Administrator, District City Government, Lahore (2005 PLC 114).*

4. Mr. Bashir Ahmed, learned counsel for Respondent No. 1 supported the impugned order dated 25.10.2016 passed by Learned SLAT and prayed for dismissal of instant Petition and further narrated that the Petitioner admitted that she had no any document to support her claim that her date of birth is 22.02.1961 at the time of her appointment; that she managed birth certificate at the verge of her retirement as an afterthought and agitated for change of her birth date in her service record on the basis of managed documents; thus, to continue in service with KPT. He continued that the petitioner was fully aware of her age because she was given an opportunity to submit documentary proof regarding her date of birth and she has retired as per her recorded birth date. Learned counsel for the Respondent No. 1 in support of his contention placed reliance upon the case of *Professor Dr. Muhammad Salam Bloch vs. Government of Baluchistan and others (2014 SCMR 1723)*.

5. We have heard the learned counsels for the parties, perused the entire material available on record as well as case law cited at the bar.

6. It appears from the record that the petitioner was appointed as Female Peon on 17.07.1995 and at the time of recruitment, her date of birth was recorded as 22.02.1955 and not 22.02.1961. The petitioner was mindful of the fact that her birth date as 22.02.1955 and not 22.02.1961. We have noted that the Petitioner had served

her grievance notice after her retirement from her service and failed to produce Schooling Certificate/ Birth Certificate to substantiate her claim before the trial Court. We do not find any discrimination regarding her age. We are of the considered view that the Petitioner has not filed her case for correction of his date of birth before the KPT within the period of two years from the date of her joining the service as provided under the law and rather after 23 years of her service when she was near to her retirement she filed representation before the KPT for change in her birth date, without showing sufficient cause for such inordinate delay in seeking correction of his date of birth and on the other has not placed on record any material warranting indulgence of this Court. The Hon'ble Supreme Court has already settled the issue in the case of *Shahid Ahmed Vs. Oil and Gas Development Company Ltd and others (2015 PLC CS 267)*. In the light of dicta laid down in the said case of Shahid Ahmed the instant Petition cannot be maintained under Article 199 of the Constitution.

7. Reverting to the plea taken by the learned counsel for the Petitioner that she is entitled to receive salary for the disputed period i.e. from 04.07.2015 to 16.01.2017, during which she has worked for the Respondent-KPT. In this regard, he has referred to Birth Certificate dated 12.11.2012 showing petitioner's date of birth as 22.02.1961 and other Medical documents. We have noticed that the Petitioner was relieved from the duty with effect from 25.10.2016 meaning thereby that Petitioner worked for the Respondent-KPT till 25.10.2016; therefore, the Petitioner was entitled to get salary of the said period.

8. We are of the considered view that the issue is of recovery of salaries from the Petitioner after her retirement on 04.07.2015 and the learned SLAT vide the impugned order dated 25.10.2016 has observed at Para-12 as follows:-

***“There is no authentic proof about the actual date of birth of the worker. All the estimates and lack accuracy. Her manual as well as computerized national identity cards mentioned her date of birth as 22<sup>nd</sup> February, 1955, which she mentioned in her application for employment. The chief Medical Officer gave her benefit of 4 ½ months and assessed her age as 40 years with which she agreed in writing. After more than 18 years and only one year before her retirement, she manipulated a birth certificate form a union council of KPK showing her five years younger than her recorded age, without showing any basis for the new date or disclosing how she came to know about it. The certificate is devoid of any evidential value.***

***The opinion of the medical board is also speculative and uncertain. Indeed, after 55 years of age, ossification test, on the basis of which the opinion was given, is of little help in determining the age.***

***In absence of any authentic proof about the actual date of birth the date of birth recorded in the service record, consciously accepted and agreed upon in writing by the worker cannot be allowed to be changed at or near retirement. The SLC allowed extension of two years in service to the worker capriciously without giving any reason.***

***In view of the above facts circumstances and reasons, the impugned order is set aside, the appeal of the worker (No. KAR-68/2015) is dismissed, the appeal of the employer (No. KAR-71/2015) is allowed and the application (No. 09/2014) of the worker before the labour court is dismissed.” (Emphasis Added)***

9. 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 05.07.2015 and her date of birth is 22.02.1955 and not 22.02.1961, which was not altered by the Respondent No.1 and the Petitioner stood retired from service on 05.07.2015, whereas, she continued in service up to 25.10.2016

without any force by KPT to continue her service with the Respondent-KPT. But, the Petitioner continued to receive salary from the Respondent No.1 due to the order dated 25.05.2015 passed by the learned SLC.

10. Perusal of record explicitly shows that as per application of the petitioner for appointment in KPT, she disclosed her date of birth as 22.02.1955 and the said application was duly signed by her. We have noticed that there is no malice on the part of KPT to discriminate the petitioner because of her own admission regarding her date of birth i.e. 22.02.1955 in the proceedings. Record further reflects that she attempted to change her stance regarding date of birth only one year before her retirement on 05.07.2015 from a Union Council of Khyber Pakhtunkhwa showing herself five years younger than her recorded age.

11. This Court vide Judgment dated 26.03.2018 passed in Constitution Petition No. D-1068 of 2016 (Re-Riffat Humayun Vs. Pakistan Television Limited & others has decided the issue of correction in date of birth and recovery proceedings of disputed period. The aforesaid Judgment was assailed before the Hon'ble Supreme Court of Pakistan in Civil Petition No. 637-K of 2018, an excerpt of the same is reproduced as under:-

***“Petitioner was appointed in the Pakistan Television Corporation Ltd. on the strength of the document furnished. Although in form date of birth was given 1960 yet on scrutiny of the documents it appeared that her date of birth is 25.04.1956 as noted in the CNIC available at page 35 of the paper book and same date was mentioned in the Secondary School Certificate issued by the Board of Intermediate and Secondary Education, Sargodha available at page 47 of the paper book. Learned counsel states that such mention of the date of birth is not disputed, however, that was incorrect date and later on when job was applied***



**correct date of birth was mentioned and medical report has so confirmed. Learned High Court has seen the document as noted above and we did not interfere in the conclusion drawn by the High Court. We do not see any reason to disagree with conclusion drawn by the learned bench of the High Court. No case for interference is made out, therefore, leave to appeal is refused and petition is dismissed.”**

12. The plea taken regarding her date of birth was elaborately taken into consideration by the learned SLAT in its judgment dated 25.10.2016, which does not require interference. We are of the opinion, the learned SLAT has rightly set-aside the order dated 25.05.2015 passed by the learned SLC.

13. 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.**

14. In the light of above dicta laid down by the Hon’ble Supreme Court, the issue of salary of disputed period of service of the Petitioner is concerned, the same issue has already been settled by the Hon’ble Supreme Court of Pakistan in the aforesaid matter, which does not require further deliberation on our part.

15. The case law cited by the learned counsel for the Petitioner is quite distinguished from the peculiar facts and circumstances of the case.

16. In view of what has been discussed above, the instant Petition is dismissed along with listed application.

**JUDGE**

**JUDGE**

**Shafi Muhammad P.A**