

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-615 of 2017

Rana Muhammad RasheedPetitioner

Versus

The Labour Appellate Tribunal Sindh & othersRespondents

Date of hearing: 13.02.2018

Mr. Qadir Hussain Khan Advocate for the Petitioner.
Mr. Bashir Ahmed Advocate for the Respondent 2 & 3.
Mr. Muhammad Rafiq Rajorvi Additional Advocate
General.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Petitioner through this Constitutional Petition has Impugned Judgment dated 23.01.2017 passed by the learned Sindh Labour Appellate Tribunal, Karachi in Revision Application No. KAR-67/2016 whereby Revision Application of the Respondent No. 2 & 3 was allowed and Petitioner's grievance Application No. 16/2016 pending before the learned Labour Court No. V, Karachi was rejected.

2. Brief facts of the case as per averments of the parties are that on 08.06.1974, Petitioner was appointed as Tonnage Supervisor and on the basis of his Matriculation Certificate recorded his date of birth in his service record as 20.10.1952. The Matriculation Certificate produced by the Petitioner at the time of his employment was issued by the Board of Intermediate and Secondary Education Karachi on 31.03.1971. Petitioner has

averred that on 24.08.2011 i.e. after 36 years of his employment and about one year before his retirement he made an application to the Respondents No. 2 & 3 for changing his date of birth from 20.10.1952 to 20.10.1954 on the premise that the Board of Intermediate and Secondary Education Karachi had already corrected the date of his birth from 20.10.1952 to 20.10.1954. The explanation for the delay he gave in the application was that he had become busy in looking after his family needs, however the Respondent No. 2 & 3 refused to make the correction in his date of birth and issued the letter of his retirement on 17th October, 2012, retiring him from service with effect from 19th October, 2012. Petitioner has further submitted that on the same day i.e. on 17th October, 2012, the Petitioner filed Civil Suit No. 997 of 2012, in the Court of the 1st Senior Civil Judge, Karachi Central, for change of his date of birth. Petitioner has asserted that the learned Senior Civil Judge decreed the suit of the Petitioner vide judgment dated 30th November, 2015, directing the Respondents to change the Petitioner's date of birth from 20th October, 1952 to 20th October 1954, in his service record, within 30 days. Petitioner has submitted that the Respondent No. 2 & 3 impugned the aforesaid judgment and Decree passed by the learned Senior Civil Judge before the learned 4th Additional District Judge, Karachi Central, by filing a Revision Application No. 01 of 2016. Petitioner added that the learned Additional District Judge vide order dated 01st August, 2016, set aside the order of the learned Senior Civil Judge, holding that the Civil Court had no jurisdiction to deal with service matters Petitioner next submitted that on 22nd September, 2016 i.e. after 42 years of his employment and four years of his

retirement, the Petitioner filed the grievance application before the learned Sindh Labour Court No. IV Karachi for direction to the Respondents No. 2 & 3 to change the date of his birth from 20th October, 1952 to 20th October, 1954 and consequently the date of his retirement from 19th October, 2012 to 20th October, 2014, and pay him the emoluments of service upto 20th October, 2014. Petitioner also sought condonation of delay in filing the grievance application under section 34 of Sindh Industrial Relations Act 2013 on the premise that he was pursuing his remedy before the Civil Court, in good faith. Petitioner further added that the Respondent Nos. 2 and 3 moved an application for rejection of the grievance application on the ground that the application was not maintainable and was hopelessly time-barred. The learned Sindh Labour Court refused to reject the application, holding that the application was maintainable and the question of limitation would be decided after recording evidence of parties. Petitioner being aggrieved by and dissatisfied with the rejection of the Petitioner's grievance application approached to the learned Sindh Labour Appellate Tribunal Karachi, which too dismissed his Appeal vide Judgment dated 23.01.2017. Petitioner being aggrieved by and dissatisfied with the aforesaid impugned judgment has filed the instant Petition.

3. Mr. Qadir Hussain Khan, learned counsel for the Petitioner has argued that the impugned judgment of Appellate Court suffers from illegality and material irregularities; that the impugned judgment is based on misconception of law; that both the courts below failed to appreciate the law involved in the matter; that in the birth certificate as well as in National Identity Card, Petitioner's

date of birth is mentioned as 20.10.1954, whereas his date of birth had wrongly been mentioned as 20.10.1952 in his service card. Learned counsel further argued that Petitioner approached to the Karachi Board of Secondary Education for correction of error due to typing mistake, however the same was wrongly refused; that Petitioner approached the Civil Court for declaration for correction of his date of birth in Secondary School Certificate and suit was decreed as prayed and in compliance of the judgment and decree passed by the learned Senior Civil Judge Karachi Central, Board of Intermediate and Secondary Education Karachi issued fresh Matriculation Certificate to the Petitioner duly corrected on 21.03.2014; that Respondent No.2 filed Civil Revision Application before the learned District Judge Karachi West, who vide order dated 01.08.2016 allowed Civil Revision filed by the Respondent No. 1 and 2 and set aside the impugned judgment and Decree passed by the learned Vith Senior Civil Judge Central Karachi; that Petitioner filed grievance Petition before the Sindh Labour Court for the said relief but was non-suited being time barred, however the learned Sindh Labour Court refused to reject the grievance application of the Petitioner, by holding that the application was maintainable and question of limitation would be decided after recording the evidence of the parties. The Appellate Court allowed the Revision Application filed by the Respondents and rejected the grievance application of the Petitioner, which is against norms of justice. Learned counsel for Petitioner in support of his contention has relied upon unreported order dated 22.04.2016 passed by this Court in C.P. No. D-4840 of 2015. He lastly prayed for allowing the instant petition.

4. Mr. Bashir Ahmed, learned counsel for Respondent No. 2 and 3 has supported the impugned judgment passed by the learned Sindh Labour Appellate Tribunal and argued that the instant petition is not maintainable in law because no fundamental right of the Petitioner is violated; that the Petitioner has retired from Karachi Dock Labour Board Service on 20.10.2012, therefore he has no cause of action to file the Petition; that the Petitioner is claiming correction / change in Date of birth at the verge of his retirement, which is not permissible under the law. He next contended that the Impugned Order is sketchy, contrary to law and not sustainable; that the documentary evidence supports the contention of the Respondents No. 2 and 3, therefore his date of birth cannot be altered at this stage; that the learned District Judge reversed the findings of learned Senior Civil Judge in Suit No. 997 of 2012, therefore no premium can be given to the Petitioner for grant of such relief; that Petitioner did not challenge the Revisional Order passed by the learned District Judge Karachi West, which has attained finality. He lastly prayed for dismissal of the captioned petition.

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

6. Petitioner was appointed as Tonnage Supervisor on 08.06.1974 in Karachi Dock Labour Board on the basis of his Secondary School Certificate issued by Board of Intermediate and Secondary Education Karachi; that his date of birth was disclosed in his Educational Certificate as 12.10.1952. The Petitioner was mindful of the fact that his Education Certificate contained

12.10.1952 as his date of birth. It is thus apparent that the Petitioner knew the fact that he is going to retire from his service on 20.10.2012, however he kept silent for the reasons best known to him however started making efforts for change in his date of birth few months prior to his retirement which apparently seems to be an afterthought on his part.

7. The pivotal Question is as to how the Petitioner who applied for the post of Tonnage Supervisor in Karachi Dock Labour Board and joined the service on 08.06.1974, did not know about his actual date of birth despite the passage of more than 43 years, especially when at various stages he filled many forms, profarmas as well as entries recorded in his service book etc.

8. Record reflects that initially the Petitioner, filed Civil Suit No. 997 of 2012 before the Court of VI Senior Civil Judge Karachi Central, by seeking declaration for correction of his date of birth on the basis of age recorded in his Secondary School Certificate issued by the Board of Intermediate and Secondary Education Karachi; instead of applying for correction in the date of birth within stipulated period of two years from the date of joining of his service with Respondent No 2 in accordance with law but the Petitioner failed to bring his case within that period. The Petitioner however succeeded in obtaining decree in Civil Suit No. 997 of 2012 vide judgment dated 05.10.2013 passed by the learned VIth Senior Civil Judge Karachi Central and got corrected his School Certificate dated 21.03.2014 from concerned quarters; however the judgment and decree passed by the learned Senior Civil Judge Karachi Central was set aside by the learned District Judge

Karachi Central vide order dated 01.08.2016 passed in Civil Revision 01 of 2016 but he failed to convince the Respondent No. 2 to redress his grievance, his date of birth/age could not be corrected. Moreover admittedly the matter was not agitated further by the Petitioner.

9. 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 terms and conditions of service of Civil/ Public Servant and cannot be resorted to through a Civil Suit. 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.

10. We have perused the Civil Service Regulation No. 171 which deals with the issue of 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.

11. The Petitioner is unable to offer any explanation for such inordinate delay in seeking correction of his date of birth at the

time of joining the service. In our view an employee did not reserve his right to seek amendment in his date of birth, which is to be done as per Rule 12-A supra, only which in the instant case has not been done. The law in this regard is very clear. We are fortified with 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). In the light of dicta laid down in the case of Shahid Ahmed and other decisions rendered by the Hon'ble Supreme Court of Pakistan as discussed (supra). The instant petition thus is not maintainable under Article 199 of the Constitution.

12. In view of the foregoing discussion and the case law referred to hereinabove, the captioned Petition is dismissed.

13. These are the reasons of our short order dated 13.02.2018, whereby we have dismissed the instant Petition.

Karachi
Dated:-13.02.2018

JUDGE

JUDGE

Shafi Muhammad /P.A