

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**Present:**

**Mr. Justice Aziz-ur-Rehman**

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

**C.P No.D-1724 of 2019**

Raja Mushtaq Ahmed .....Petitioner

Versus

Province of Sindh & another .....Respondents

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**Date of hearing: 10.04.2019**

**Date of order: 10.04.2019**

M/s. M M Aqil Awan, Muhammad Arshad Khan Tanoli & Danish Rashid Khan, Advocates for the Petitioner.

Mr. Abdul Jalil Zubedi, A.A.G. a/w Ms. Jamila, Standing Counsel.

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**ORDER**

**ADNAN-UL-KARIM MEMON, J:-** Through the instant petition, the Petitioner seeks directions to the Inspector General of Police, Sindh to decide the issue of genuineness of his date of birth in view of the reports furnished by Deputy Inspector General of Police (Establishment) and report submitted by Anti-corruption Establishment, Government of Sindh vide letter dated 08.01.2019 with regard to interpolation in the petitioner's date of birth viz. 24.12.1960.

2. Brief facts of the case as per pleadings of the petitioner are that Petitioner joined Provincial Police service in the year 1985 as Assistant Sub-Inspector and his date of birth was incorporated in the Service Book i.e. 24.12.1966, he was promoted to the rank

of Sub-Inspector with effect from 6<sup>th</sup> March 1988. He was further promoted to the rank of Inspector with effect from 11th Jan 1996 and finally promoted as Deputy Superintendent of Police in BPS-17.

3. The basic grievance of the Petitioner is that his date of birth is 24.12.1966; however, in the Final Seniority List of Deputy Superintendents of Police, Sindh issued on 04.10.2013 by the Home Department, Government of Sindh, his date of birth has been shown as 24.12.1960, instead of 24.12.1966. He being aggrieved by and dis-satisfied with the aforesaid factum submitted an application dated 17.08.2014 to the Inspector General of Police (IGP), Sindh Karachi for necessary correction in his date of birth, in the service record. Upon receipt of the aforesaid application, IGP Sindh vide letter dated 18.09.2014 directed Deputy Inspector General Police (Administration) for necessary action, who vide letter dated 24.10.2014 opined that according to the testimonials of the petitioner i.e. Matriculation Certificate, Service Book, Pay Slip, Birth Certificate, CNIC, Police Service Card and Domicile, his date of birth is 24.12.1966. The IGP, Sindh vide letter dated 04.12.2014 directed for verification of Matriculation Certificate of the Petitioner, which was verified by Sindh Board of Technical Education, Karachi vide letter dated 14.01.2015 showing the date of birth of the Petitioner as 24.12.1966. The report was accordingly submitted to the IGP Sindh vide letter dated 26.02.2015, however, the IGP Sindh vide letter dated 09.04.2018 inquired about the verification of Service Book of the Petitioner regarding purported tempering/forgery in the Service Book, resultantly, the office of Enquiries and Anti-corruption Establishment, Services, General Administration and Coordination department vide letter dated

08.1.2019 opined that the purported tempering / forgery in the Service Book of the petitioner has occurred in the office of Inspector General of Police Sindh, being custodian of such record. Petitioner being aggrieved by and dissatisfied with the inaction on the part of respondent-IGP has filed the instant Petition on 13.03.2019.

4. We queried from the learned counsel as to how the instant petition is maintainable against the purported tempering/forgery in the Service Book of the Petitioner in the office of Inspector General of Police, Sindh as the same is disputed question of fact and requires complete evidence. Mr. M M Aqil Awan, learned counsel for the Petitioner, in reply to the query, has submitted that his only grievance is with regard to decision to be rendered by the IGP Sindh on his representation moved in the year 2014, which has not yet been passed; that three inquiries have been conducted by three different officers/agencies but the IGP Sindh is sitting over the file and not passing the final order, regarding genuineness of date of birth of Petitioner; that since the Petition is that of mandamus, as much it requires no ground except that Respondent No.2 is responsible to decide finally regarding genuineness of date of birth of Petitioner, but despite the inquiries mentioned above he is not deciding the same; that inaction on the part of Respondent No.2 is prejudicing the case of the Petitioner; that the Respondents are wasting time with malafide intention; that the petitioner has no other efficacious and alternate remedy but to approach this court for redressal of his grievances; that the Petitioner is made to retire illegally, per disputed date of birth and the date of superannuation comes to 24.12.2020. In support of his

contentions, he has relied upon the judgments rendered by the Honorable Supreme Court in the cases of Administrative Committee of High Court of Sindh through Registrar, High Court of Sindh, Karachi and another v. Arjun Ram K. Talreja and another (2008 SCMR 255) and Qazi Chand Muhammad v. Province of Sindh and others (2009 SCMR 269). He lastly prayed for allowing the petition.

5. On the contrary, Mr. Abdul Jalil Zubedi, learned AAG has raised the preliminary objection with respect to the maintainability of the instant Petition.

6. We have heard the learned counsel for the parties and have perused the entire material available on record.

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. Admittedly, the Petitioner is a Civil Servant and his case falls within the ambit of Section 3 (2) of the Sindh Service Tribunals Act, 1973 which says that Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil Servants as under Section 4 of the Sindh Service Tribunal Act a Civil Servant has a right to file an appeal against the impugned order adversely affecting the terms and conditions of his service before the Tribunal subject to the qualification provided therein. At this stage Mr. M M Aqil Awan, learned counsel for the Petitioner has pointed out that there is no final order passed by the respondents, therefore he cannot approach the learned Sindh Service Tribunal as provided under Section 4 of the Sindh Service Tribunal Act.

9. As per the pleadings of the parties and arguments extended thereon, the foremost question in the present proceedings is whether the date of Birth of the Petitioner is 24.12.1966 or 24.12.1960?

10. We have gone through the record, it appears that the office of Enquiries and Anti-corruption Establishment, Services, General Administration and Coordination Department vide letter dated 08.1.2019 has opined that the tempering / forgery in the Service Book of the petitioner has occurred in the office of Inspector General of Police Sindh, being custodian of such record. If this being the position of the case, the question arises as to how we can direct IGP Sindh to decide the representation of the petitioner on the aforesaid ground, when the allegations of tempering of the service record of the petitioner is in the field.

11. In our view, the petitioner has brought the case based on disputed questions of fact, which cannot be decided in writ petition, besides that the mode of correction in the date of birth of a civil 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 a Civil Servant and cannot be resorted to through a writ petition, in this respect principles laid down by the Honorable Supreme Court in the case of Dr. Muhammad Aslam Baloch v. Government of Baluchistan (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. Our view is further supported by the provision of 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, which admittedly has not been done by the Petitioner in time but at a belated stage in the year 2014, 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 in limini along with listed application(s).

JUDGE

JUDGE

**Nadir/PA**