

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –5571 of 2020

Before:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Majeedullah Khan

Versus

Karachi Water & Sewerage Board and 03 others

Date of hearing & order : 23.12.2020

Petitioner Majeedullah Khan present in person.

Mr. Waleed Khanzada, advocate for KW&SB.

ORDER

ADNAN-UL-KARIM MEMON, J. This constitutional petition is filed under Article 199 the Constitution of Pakistan for issuance of the writ of Certiorari/ Mandamus to call for the records relating to the impugned alteration in his date of Birth by the respondent-Karachi Water & Sewerage Board (KW&SB), quash the same and direct the respondents to correct his date of birth in the service register as 20.08.1963 instead of 12.6.1959, allowing the petitioner to continue in service till 24.6.2023.

2. Per petitioner, he joined the service as Coolie on 24.06.1979 in KW&SB and was subsequently promoted as Electrician (BPS-9) vide office order dated 15.9.1993. His date of birth, according to Matriculation Certificate, CNIC, and service card is 20.08.1963. According to him, his current date of birth is 20.08.1963. Thus, he applied for correction of date of birth on 28.1.2019. Since there was a delay in processing his application, in the meanwhile respondent-KW&SB issued the impugned order dated 13.6.2019 whereby he has been retired from the service of respondents on attaining the age of superannuation on 17.6.2019. He being aggrieved by and dissatisfied with the impugned order filed this petition seeking direction to the respondents to correct his date of birth in the service register as 20.08.1963 instead of 12.6.1959, by allowing him to continue in service till 24.6.2023.

3. Petitioner is present in person submits that his above contentions are supported by the birth/school certificates, issued by the competent Authority, however, contrary to the facts and Rules, the impugned order has been passed, and therefore, it has to be quashed.

4. Mr. Waleed Khanzada, learned counsel representing KW&SB, argued that in view of his superannuation date i.e. 17.6.2019, he approached the respondents for the alteration of his date of birth in the service record and therefore, his request at the belated stage could not be considered. He further argued that in the service book also the petitioner acknowledged the original date of birth as 12.6.1959. Therefore, it is evident at every stage that he consciously declared his date of birth as 12.6.1959, and subsequently, he manipulated the second entry in the service book in connivance with the staff based on matriculation certificate, which was later on verified by the respondents and held that his actual date of birth is 12.6.1959 and not 20.08.1963. Hence, he is estopped from denying his declared date of birth at this point.

5. We have heard the petitioner who is present in person and Mr. Waleed Khanzada learned counsel representing KW&SB and perused the records.

6. The foremost question in the present proceedings is whether the date of birth of the Petitioner is 12.6.1959 or 20.08.1963?

7. We have gone through the service record of the petitioner. It appears that he was appointed as Coolie in KW&SB vide appointment letter dated 24.06 1979. His date of birth, as per service records, is 12.6.1959. Prima-facie the Petitioner was mindful of the fact that in the said document he mentioned his date of birth as 12.6.1959 instead of 20.08.1963. We are cognizant of the fact that once the date of birth is entered in the service record that cannot be subsequently changed except within two years from the date of the initial appointment of the employee in government service.

8. From the perusal of the rule position, it is clear that the petitioner can be held responsible that he did not file his case for correction of his date of birth from any forum within two years from the date of joining in service as provided under the law. It appears from the record that his date of retirement from service was due on 17.6.2019, whereas he has filed the present petition for the above relief, few months after his date of retirement as discussed supra; besides he has failed to give any explanation for such inordinate delay in seeking correction of his date of birth and has not placed on record any forceful material warranting indulgence of this Court in the matter. The credential of the Petitioner prima facie show that his actual date of birth is 12.6.1959 and not 20.08.1963, he has attempted to convince us that his date of birth was wrongly entered in the service book, therefore, by taking advantage of his CNIC, Matriculation Certificate and service

card/personal record and other documents, whereby he sought the correction of date of birth, but later on his version was rejected by the competent authority. Petitioner has tried to justify his action that he was never at fault and he did not obtain the job based on a fake document.

9. The question arises that once his date of birth is entered in the documents as discussed supra, it was incumbent upon the Petitioner to get it corrected in time if he felt aggrieved by the fact that his date of birth has wrongly been entered in these documents, thus merely relying upon his CNIC, Matriculation Certificate and service card to claim immunity which acts in our view would not clarify his position. We are of the considered view, that merely relying upon certain documents as discussed supra is not sufficient to claim that the petitioner's date of birth was 20.08.1963 and not 12.6.1959, the 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 service, which should be corrected; if it is so, then it should be corrected within the stipulated time and not otherwise. The Petitioner has admitted that his date of birth 12.6.1959 was mentioned in the aforesaid documents issued by the competent authority hence these admitted documents cannot be discarded when these are still holding field. It is a well-settled principle of law that once the date of birth of a person or employee is entered in the service book/qualification certificate that would be final and always considered to determine the age of a person in service in superannuation i.e. 60 years.

10. We have noticed that the mode of correction of date of birth in Government / Public service as 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 Civil / Public servant. It has also been well established 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 this respect principle laid down in the case of Dr. Muhammad Aslam Baloch v. Government of Baluchistan (2014 SCMR 1723). The Honorable Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) has already dealt with the issue of alteration in the date of birth.

11. We have perused the Civil Service Regulations No. 171 and Fundamental Rule. which deals with the issue of correction in the date of birth, which explicitly shows that the date of birth once recorded in the service book, no alteration of the entry afterward be allowed, unless an application in this behalf is made by the

employee to the concerned quarters within two years of the date on which his service book was opened.

12. The decision rendered by the Honorable Supreme Court of Pakistan in the case of Shahid Ahmed v. Oil and Gas Development Company Limited and others (2015 PLC (C.S) 267 is a guiding principle on the issue involved in the present proceedings. The Petitioner did not reserve the right to seek amendment in his date of birth at the belated stage when he stood retired from service on 17.6.2019.

13. Reverting to the plea raised by the Petitioner about the principle of locus poenitentiae, we would say that it is not applicable in this case because the Petitioner retired from service on 17.6.2019 as per his actual date of birth and his date of birth was not altered by the respondents in the due process of time i.e. within two years and he remained in service till his retirement.

14. At this stage, we asked the petitioner as to how he claims his date of birth as 20.08.1963 when he entered into government service on 24.06.1979 he was approximately 17 years of age. He concedes the aforesaid factual position of the case. In our view, in Service Jurisprudence, the employee can only be entered into Government service when he is at the age of 18 years or above. Therefore, the assertion of the petitioner that his actual date of birth is 20.08.1963 is misconceived and misleading.

15. In the light of the above facts and law mentioned above, we do not see any illegality, infirmity, or material irregularity in the impugned letter dated 13.6.2019 issued passed by the respondent-KW&SB. The letter dated 13.6.2019 issued by the Respondent-KW&SB, thus is found to be just and proper. Resultantly, the instant petition is dismissed along with the pending application(s) with no order as to costs.

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Shahzad*