

*Order Sheet*  
**IN THE HIGH COURT OF SINDH CIRCUIT COURT  
AT HYDERABAD**

C.P No.D-725 of 2018

***Allah Warayo Vs. Province of Sindh & others.***

**PRESENT:**

***Mr. Justice Arshad Hussain Khan***

***Mr. Justice Irshad Ali Shah***

**11.02.2021**

Mr. Qambar Ali Jamali, Advocate for petitioner.

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

Mr. Kamaluddin, Advocate for University/respondents No.2 to 5.

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**ARSHAD HUSSAIN KHAN, J.** Through instant constitutional petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioner has made the following prayers: -

- A. *To declare that the act of respondent is discriminatory and nothing but to penalize the petitioner due to raising his voice against corruption and irregularities of respondents.*
- B. *To declare that the letter dated 24.08.2017 and appeal rejection's letter dated 21.12.2017 both are illegal, unlawful hence liable to be set-aside.*
- C. *To set aside the both letters i.e. letter dated 24.08.2017 and appeal rejection's letter dated 21.12.2017, and declare that the petitioner is entitled to continue in service up to 07.01.2022 as per documents issued by respondent i.e. annexures mentioned above.*
- D. *That this Hon'ble court may kindly be pleased to suspend the letter dated 24.08.2017 and appeal rejection's letter dated 21.12.2017 till disposal of this petition.*

**OR**

- A. *Any other relief(s) which this Honourable Court may deem fit and proper may kindly be granted*

**2.** The brief facts leading to filing of this constitutional petition are that on 02.09.1989 the petitioner was appointed as Chowkidar (B-1) in the Estate Management Section at Mehran University College of Engineering & Technology, Nawabshah. According to him, his date of birth is shown as 08.01.1962 in the

educational documents i.e. primary school certificate, which is also registered under GR No.186 of Government Primary School, Pir Zakri No.1, District Shaheed Benazirabad and his matriculation certificate also bears the same date of birth as well intermediate; hence, as per rules his superannuation date will be 07.01.2022. However, he received a letter dated 24.08.2017 from respondent No.3 / Registrar whereby his date of birth has been allegedly shown as 09.09.1958 and he was asked to opt either for the LPR or continue to serve and avail leave encashment on his superannuation on 09.09.2018. Being aggrieved by the above letter, the petitioner preferred an appeal before the Syndicate through Vice-Chancellor on 07.09.2017, but the same was rejected without providing him any opportunity of hearing on 21.12.2017. Hence, the petitioner has assailed the actions of respondents for retiring him before his actual date.

**3.** Upon notice, the contesting respondents No.2, 3 and 5 filed their comments, wherein they have categorically denied the version of the petitioner and stated that as per available record in petitioner's personal file, the petitioner submitted NIC showing his year of birth as 1959; domicile, surety bond, character certificate, police verification and physical fitness certificate (medical certificate), issued by Medical Officer MUET Nawabshah on 09.09.1989 were also submitted at the time of petitioner's appointment / joining, except primary pass certificate as claimed by him; seniority list prepared by the university and annual confidential reports regarding petitioner also show the date of birth of the petitioner as 09.09.1959. It is also averred that after completion of 24 years, the petitioner passed matriculation and thus changed his date of birth, which cannot be considered as per rules. It is further stated that at the time of joining service, the petitioner did not submit any educational certificate thus the petitioner was considered as illiterate person and as per practice and policy his date of birth was calculated from Medical Certificate. It also stated that the petitioner was allowed promotion in BPS-07 w.e.f. 25.06.2007 and in this regard he himself submitted joining report, enclosed domicile and CNIC, which show year of his birth as 1959; hence, the claim of the petitioner is baseless and false and prayed for dismissal of instant petition.

**4.** Learned counsel for the petitioner during his arguments has contended that the educational documents annexed with the memo of petition clearly show the date of birth of the petitioner as

08.01.1962 and as such his retirement is to take place on 07.01.2022, but since the petitioner was working for the supremacy of rules, regulations and promotion of quality of education and was president of Shah Abdul Latif Group, therefore, with *mala fide* intention the respondents in order to get revenge and pressurize, issued the impugned letter for retirement of the petitioner before the actual date of his superannuation. Learned counsel contended that the actions which are being taken by the respondents by issuing such letter for retirement be declared illegal and without lawful authority.

**5.** On the other hand, learned counsel for respondents No.2 to 5 contended that once the date of birth of a civil servant recorded at the time of joining service it shall be final and no alteration can be permitted thereafter. In fact, the petitioner did not submit any educational document at the time of his joining into service; hence, his birth date was recorded from medical certificate issued by the medical officer as well as N.I.C. and domicile. He next contended that the petitioner was Greenery Supervisor in the University and the stance taken by him that he has been targeted due to raising voice for the supremacy of education, is based on *mala fide* as neither he was student nor professor in the University. Lastly, learned counsel contended that the claim of the petitioner is baseless and false one, hence, prayed for dismissal of instant petition.

**6.** Heard and perused the record.

From the record, it transpires that the claim of the petitioner in respect of his date of birth as 08.1.1962 instead of 09.09.1958, as per the respondents' record, is mainly based on his primary school leaving certificate and intermediate certificates, and as such, he seeks declaration in respect of actions for his retirement on 08.09.2018 by the respondent-university as illegal. The petitioner in support of his stance in the case has annexed documents viz, primary school leaving certificate issued on 29.02.2012 by the Head Master, Government Primary School, Pir Zakri No.1, Secondary School Makrs Certificate Part-I and Part-II Annual Examination 2013, Secondary School Certificate Examination issued by the Board of Intermediate & Secondary Education Hyderabad on 10.06.2015, service certificate issued on 15.10.2003. The said documents are apparently issued much after his appointment in the respondent-university. However, it is astonishing that the petitioner despite having knowledge of the fact

that respondent-university is seriously disputing his date of birth i.e. 08.01.1962, has neither filed any rejoinder denying the facts and documents of para-wise comments filed on behalf of respondents No. 2, 3, and 5 nor any document relating to the period of his appointment i.e. 1989 to support his stance and or controvert the stance of the respondent-university. Conversely, respondent-university in support of its stance in the case filed plethora of documents including NIC issued on 25.3.1987 and CNIC of the petitioner issued by NADRA on 05.09.2002, which the petitioner himself submitted with respondent-university. Perusal of the said documents clearly show the year of birth of the petitioner as "1959". Moreover, the seniority lists prepared for promotion of the employees and the Annual Confidential Report in respect of the petitioner also show his birth year as 1959. The documents filed by the respondent-university, in absence of any denial thereof by the petitioner, manifestly clarified the birth date of the petitioner. Whereas the documents filed and relied upon by the petitioner, which are admittedly much after joining of the petitioner in the respondent-university cannot be based for calculation of service period. In view of such position, the facts have become controversial which cannot be adjudicated upon under the writ jurisdiction of this court.

7. It is now well settled that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the framework of Constitution and this extraordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation and non-availability of any alternate remedy under the law where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. It is worth mentioning that it is mandatory and obligatory for a party invoking the constitutional jurisdiction to establish a clear legal right, which should be beyond any doubt and controversy. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties by the courts having plenary jurisdiction in matter. Reliance can be placed on the case of Anjuman Fruit Arhtian and others vs. Deputy Commissioner, Faisalabad and others [2011 SCMR 279].

8. Besides above, this petition, apparently is also hit by laches as petitioner despite having knowledge of the fact that in the

record of respondent-university his year of birth was recorded as 1958 at the time of entry into service in the year 1989, the petitioner chosen to remain silent and did not take any step to get it corrected. However, at the time near to his superannuation, the petitioner has filed instant petition (in the year 2018) after a considerable delay of approximately 28 years without any justification and in this regard, no satisfactory explanation has been furnished by him as such this petition is liable to be dismissed on the ground of laches as well. The Hon'ble Supreme Court of Pakistan in the case of Civil Aviation Authority through Director General and 3 others v. Mir Zulfiqar Ali and another [2016 SCMR 183], while dealing with the issue of laches, inter alia, has held as under:

*“The respondent No.1, who appeared in person, despite opportunity failed to explain or justify the delay. Since the petition was filed after a lapse of almost 10 years and that too without any justification or explanation for such delay, the same ought to have been dismissed as such. However through the impugned order the petition was instead allowed, which order, on account of the above noted delay in filing of the petition, is not sustainable. The appeal is, therefore, allowed and the impugned order is accordingly set aside.”*

9. The upshot of the above discussion is that we do not find any substance and merit in the petition, which besides being, misconceived in law, also attempts to agitate a grievance at a belated stage without any reasonable ground. We are of the considered view that the alleged claim of the petitioner is also controversial and requires evidence, which cannot be examined or decided by this Court under its constitutional jurisdiction. Accordingly, instant petition was dismissed vide our short order dated 11.02.2021, and these are the reasons for such short order.

JUDGE

JUDGE

Dated 18.02.2021

\*Abdullah Channa/PS\*