

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-5819 of 2016

(Abdul Kareem v. M/s Trading Corporation of Pakistan (Put) Limited)

Mr. Agha Ali Durrani, advocate for the petitioner

Mr. Ashfaq Hussain Rizvi, advocate for respondent No.1

Mr. Muhammad Nishat Warsi, DAG

Date of hearing
& order :

07.02.2022

ORDER

The above referred Constitutional Petition is being disposed of by this Order in the following terms.

2. The case of the petitioner is that he was performing duties as Naib Qasid in respondent-trading Corporation of Pakistan and due to some dispute in the date of birth/age, he filed a Civil Suit No.76 of 2008 which was dismissed by the learned Civil Court on 14.04.2008 against which he filed an appeal No. 124 of 2008 which was also dismissed vide judgment dated 25.07.2009. It is averred by the petitioner that he filed a Grievance Petition No.41 of 2010 in the Vth Labor Court, Karachi but the Labor Court also dismissed the Grievance Petition, thereafter, he filed an appeal in the Labor Appellate Tribunal and vide judgment dated 25.08.2014, the appeal was allowed and the impugned order of the Labor Court was set aside and he was also directed to be reinstated in service with all back benefits with further directions to allow him to continue service till 09.03.2016. The respondent-establishment being aggrieved by and dissatisfied with the above decision filed CP No. D-1715 of 2014 before this Court against the order dated 25.03.2014, passed by the learned Sindh Labor Appellate Tribunal in Appeal No.KAR-134 of 2012 and finally this Court vide order dated 10.3.2016 disposed of the petition with the following directions:

The impugned order passed by the learned Labour Appellate Tribunal in Appeal No.KAR- 134 of 2012 dated 25.03.2014 is set aside. The learned Labour Appellate Tribunal is directed to decide the appeal afresh within a period of two months after providing ample opportunity of hearing to the parties. Learned counsel for the Petitioner pointed out an order dated 07.04.2014, whereby, the operation of the impugned order was suspended subject to depositing all back benefits and the current salary of the Respondent No. 1 with the Nazir of this Court. Let the appeal be decided by the learned Labour Appellate Tribunal first and in case the appeal is allowed, the Petitioner may move proper application in this petition for passing necessary orders and in case the appeal is dismissed by the Tribunal then Respondent No.1 may also apply for the release of amount. However, till such time the appeal is decided, the amount will remain intact with the Nazir of this Court.”

3. The learned Labor Appellate Tribunal after hearing the parties dismissed appeal No.KAR-134/2012 vide judgment dated 9.6.2016 with the following observation:

“15. The Hon'ble Supreme Court has deprecated the practice on the part of employees seeking change in date of birth at the fag-end of carrier and has termed it as a malady liable to be curbed. For this reference may be made to the cases of Dr. Shamim Waheed 12008 PLC (CS) 192 Supreme Court), Dr. Muhammad Aslam Baloch (2014 SCMR 1723), Mehr Khan (1998 SCMR 613), Qamuruddin (2007 SCMR 66) and Shahid Ahmed [2015 PLC (CS) 267 Supreme Court)

16. In view of the above facts, circumstances and reasons, no exception can be taken to the findings of the labor court that the appellant had no case on merits, which was even otherwise hopelessly time-barred. Accordingly, the appeal, being without any merit, is dismissed.”

4. Petitioner namely Abdul Kareem, being aggrieved by and dissatisfied with the impugned judgment has filed the instant petition inter-alia on the ground that the impugned Judgment passed by the learned SLAT is full of errors based on misreading and non-reading of evidence; that the findings of the learned court below is arbitrary and perverse; that the averments of the Petitioner made in the affidavits in evidence were not considered in the impugned Judgment, therefore the judgment is nullity in the eyes of law; that the learned court below has failed to appreciate the material aspects of the matter; that the learned member of SLAT has failed to appreciate that the age of worker was decided on the basis of matriculation certificate and his date of birth is 28.11.1956 the domicile also shows 28.11.1956, therefore the impugned Judgment is illegal and against the law, thus is liable to be set aside; that petitioner provided sufficient material to prove his case with regard to his actual date of birth but the learned court below has failed to appreciate the documentary evidence; that service record of the petitioner shows the same date of birth; that petitioner prior to joining the respondent-establishment was serving in Pakistan Army as a Sepy which factum shows that he joined the duty in the year 1969 and his date of birth was recorded as 17.7.1952 and was 17 years old and the Respondent- establishment suppressed this fact, therefore the petitioner is required to be reinstated in service with back benefits, therefore the impugned Judgment cannot be sustained on this score alone, and is thus liable to be set aside. He lastly prayed for setting aside the judgment rendered by the learned SLAT.

5. Mr. Ashfaque Hussain Rizvi learned counsel representing respondent-establishment has supported the impugned judgment passed by the learned SLAT and prayed for dismissal of the petition filed by Petitioner namely Abdul Kareem.

6. We have heard the learned counsel for the parties and with their assistance carefully gone through the material placed by them.

7. The fundamental questions in the present proceedings are whether Civil Suit No.76/2008 filed by the petitioner for Declaration, Mandatory, and Permanent Injunction concerning his date of birth was rightly dismissed by the learned IInd Civil Judge Karachi, South, vide judgment and decree dated 28.10.2008 and maintained by the Appellate Court in Civil Appeal No.134 of 2012, vide judgment and decree dated 25.7.2009; And, whether it's viries, could be called in question in Constitution Petition, whether this Court can upset the judgment of learned SLAT in Constitution Petition And whether the date of birth of the petitioner is 28.11.1956 or otherwise.

8. To go ahead with the aforesaid propositions, and reach the correct conclusion of the case, we would like to have, first, a report of NADRA on the subject issue of date of birth of the petitioner.

9. In view of the above, let notice be issued to the chairman NADRA to submit a comprehensive report about the actual date of birth of the petitioner.

10. Office is directed to dispatch necessary documents available on the record to the Chairman NADRA for his report, which shall come on record within two weeks from today positively. The parties shall assist the office in sending the requisite documents to the Chairman NADRA accordingly. Let a copy of this order be transmitted to the Chairman NADRA for compliance.

To come up after two weeks.

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