

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –1720 of 2021

Before:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

Noor Muhammad

Versus

Province of Sindh and 02 others

Date of hearing & order : 10.03.2021

Mr. Ghulam Shabbir Babar, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. This constitutional petition is filed under Article 199 of the Constitution of Pakistan for issuance of the writ of Mandamus relating to the alteration in his date of Birth by the respondent-Jinnah Post-Graduate Medical Centre Karachi (JPMC), and quash the office letter dated 25.9.2020 whereby he is retiring from government service with effect from 01.07.2021, and in the meanwhile, allow him to continue in service till 27.12.2032.

2. Per petitioner, he joined the service as Mouazzin on 24.12.1989 in JPMC Karachi on an ad-hoc basis and was subsequently regularized and confirmed as the permanent employee in the said post in the year 1992. His date of birth, according to Matriculation Certificate, CNIC, Service Book, Driving License, and Passport is 27.12.1972. According to him, his current date of birth is 27.12.1972. Thus, he applied for correction of date of birth on 15.09.2020, however, the respondent-Health Department vide letter dated 3.2.2021 referred the matter to the Executive Director JPMC for furnishing comments, but to no avail. Per petitioner, the respondent- JPMC has issued the impugned order dated 25.9.2020 whereby is said to be retiring from the service of respondent-JPMC on attaining the age of superannuation on 01.07.2021. 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 salary slip as 27.12.1972 instead of 01.07.1961, by allowing him to continue in service till 27.12.2032.

3. Mr. Ghulam Shabbir Babar, submits that the petitioner has timely approached respondents 2 and 3 for consideration of his application, who have also sent letters to respondent No.3 for correction of the date of birth but no positive response has been given to the petitioner, which is against the law as

well as the principle of natural justice, however, contrary to the facts and Rules, the impugned order has been passed, and therefore, it has to be quashed.

4. We have heard the learned counsel petitioner and perused the records.

5. In the first place, we would like to examine the issue of maintainability of the captioned Petition under Article 199 of the Constitution.

6. Admittedly, the Petitioner has approached this Court on 08.03.2021 whereas the alleged cause of action accrued to him in September 2020 when he was allowed three sixty-five days leave encashment, in place of LPR with effect from 01.07.2020 to 30.06.2021 after a delay of a considerable period for the reasons best known to him. The record reflects that he was appointed as Mouazzin in JPMC vide office order dated 24.12.1989. His date of birth, as per the salary slip is 01.07.1961.

7. Adverting to the main contention of the petitioner that his Service Book discloses his date of birth as 27.12.1972. We have noticed that his appointment letter explicitly shows that he joined the service of JPMC on 24.12.1989. At this stage, we asked the learned counsel for the petitioner as to how he claims his date of birth as 27.12.1972 when he entered into government service on 24.12.1989, he was approximately 17 years of age. In reply, he prayed for disposal of this petition as not pressed to avail his remedy before the competent forum under the law. We do not agree with his submission, 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 27.12.1972 is misconceived and misleading.

8. In the light of the above facts and law mentioned above, we do not see merit in the instant petition, which is dismissed in limine along with the pending application(s) with costs of Rs.10, 000/- to be deposited in the High Court Clinic.

9. These are the reasons for our short order dated 10.03.2021 whereby we dismissed the instant petition in limine with costs.

Dated: 10.03.2021

J U D G E

J U D G E

Nadir*