

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-141 of 2023

Yasmeen Nagori

Petitioner: Through Mr. Kamran Shehzad Siddiqui, advocate.

Respondents: Nemo.

Date of hearing
& Decision: 10.01.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. – Through this petition, the Petitioner seeks directions to the Deputy Director Rehabilitation Centre for Multiple Handicapped children Directorate of Social Welfare Government of Sindh (RCMHC) to decide the issue of the genuineness of her date of birth because of the reports furnished by Deputy Director (Admn.) Social Welfare Department, Government of Sindh, vide letter dated 09th June 2021 and issue the correct certificate of date of birth of the petitioner as 08.07.1965 instead of 07.07.1959 and to continue with her service as per date of superannuation, which is due in the year 2025.

2. Brief facts of the case as per pleadings of the petitioner are that Petitioner joined as Tailoring Instructor in the year 1987 in Social Welfare Department Thatta and her date of birth was erroneously incorporated in the Service Book as 07.07.1959 instead of 08.07.1965, which was subsequently corrected by the competent authority and verified by the respondent-RCMHC Assistant Director Rehabilitation Centre for Multiple Handicapped children District vide endorsement dated 27.04.2010 made in the service book. However the same has not yet been implemented by the respondent department without assigning reasons.

3. The basic grievance of the Petitioner is that her date of birth is 08.07.1965; however, due to a bonfide mistake, her date of birth has been shown as 07.07.1959, instead of 08.07.1965. She being aggrieved by and dissatisfied with the aforesaid factum applied to the competent authority for

necessary correction in her date of birth, in the service record. Upon receipt of the aforesaid application, the respondents vide letter dated 25.11.2022 recommended her case for appropriate action by the competent authority for the reason that the inquiry committee opined that her case of retirement ought to be 2017 they further opined that the salary and allowance drawn by petitioner onwards shall be recovered. In this regard, Regional Director vide letter dated 07.12.2022 referred the matter to the Secretary to send her case to the competent authority for appropriate orders, which triggered the cause to the petitioner to approach this Court for correction of her date of birth as 08.07.1965 enabling her to retire on 08.07.2025.

4. We queried from the learned counsel as to how the instant petition is maintainable against the purported changing in the Service Book of the Petitioner as the same is a disputed question of fact and requires complete evidence.

5. Mr. Kamran Shehzad Siddiqui, learned counsel for the Petitioner, in reply to the query, has submitted that the date of birth of Government Employees shall be considered and counted from Matric Certificate rather than any other documents and the correct date of birth of petitioner as per Matric Certificate is 08.07.1964 and date of retirement will be 07.07.2025. He further submitted that in June 1987, the appointment of the petitioner was temporary for two years, and as per law that two years is not considered in the permanent tenure of the petitioner and the petitioner had been reappointed on a Matric basis in BPS-14 on 04.08.1990 in continuation of her service and just on 10.08.1990; that the petitioner moved the application for correction of date of birth in the Service Book as per Matric Certificate and that application is also part of the record so that department is responsible to correct the date of birth of petitioner. He further submitted that his only grievance is with regard to decision to be rendered by the competent authority on her application, which has not yet been passed; that the inquiry has been conducted by concerned department but the Secretary Department of Empowerment of Persons with Disabilities Karachi 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 respondents are responsible to decide finally regarding genuineness of date of birth of

Petitioner, but despite the inquiry mentioned above he is not deciding the same; that inaction on the part of respondents 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 her grievances; that the Petitioner is forced to retire illegally, as per disputed date of birth. He lastly prayed for allowing the petition.

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

7. The foremost question in the present proceedings is whether the date of Birth of the Petitioner is 08.07.1965 or 07.07.1959.

8. We have gone through the record, and it appears that the office of Regional Directorate of Special Education & Rehabilitation Centers, Department of Empowerment of Persons with Disabilities, Government of Sindh vide letter dated 07.12.2022 has recommended that the petitioner ought to have retired from Social Welfare Department, Government of Sindh in the year 2017, according to her actual date of birth mentioned in Matric Certificate dated 20.10.1991 which has been declared fake by Secondary Board of Education, Hyderabad. However, this stance of the respondents has been refuted by the petitioner on the premise that the aforesaid document does not belong to her and the same stance of the petitioner has also been rebutted by the respondents and both the certificates have been placed on record. One document shows the date of birth as 08.07.1965 whereas shows her date of birth as 1957. If this is the position of the case, the question arises as to how this court could direct competent authority to decide the representation/application of the petitioner on the aforesaid ground, when the allegations of tempering of the service record of the petitioner is in the field.

9. In our view, the petitioner has brought the case based on disputed questions of fact, which cannot be decided in the 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 shows that the date of birth once recorded in the service book no alteration of the entry should afterward be allowed unless an application in that behalf is made by the employee to the concerned quarters within two years of the date on which her service book was opened, which admittedly contains the date of birth as 07.07.1959 however, at a belated stage, petitioner has attempted to persuade this Court that her date of birth has already been corrected and verified by the competent authority and 08.07.1965 which factum appears at Page 37. We are not satisfied with the aforesaid contentions of the petitioner for the simple reason that the original service record thus shows the date of birth as 07.07.1959 which was subsequently corrected as 08.07.1965 and it is not yet ascertained as to who has made a such correction in the service book in the year 2010 after a long time when the petitioner due to her actual date of birth stood retired in the year 2017, however, due to such insertion of the new entry in the service book petitioner has attempted to continue with the job and claimed salary of the intervening period and allow her to retire in 2025, the aforesaid stance could not be endorsed by this Court in terms of the provision of Civil Service Regulation No. 171, read with Rule 12-A of the Civil Servants (Appointment, Promotion, and Transfer) Rules, 1973. Even otherwise, this petition cannot be allowed in terms of the ratio of the judgments passed by the Honorable Supreme Court of Pakistan in the cases of *Shahid Ahmed Vs. Oil and Gas Development Company Ltd and others* (2015 **PLC CS 267**) and *Ali Azhar Khan Baloch vs. Province of Sindh* (2015 **SCMR 456**).

10. In the light of the dicta laid down in the case of *Shahid Ahmed and others* rendered by the Hon'ble Supreme Court of Pakistan as discussed (supra), the instant petition thus is found to be not maintainable under Article 199 of the Constitution.

11. In view of the foregoing discussion and the case law referred to hereinabove, the captioned Petition is dismissed in limine along with the listed application(s).

JUDGE

JUDGE

Nadir*