

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1097 of 2023

(Mst. Diya alias Kasoo versus Province of Sindh and others)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **24.04.2024**

Date of decision : **24.04.2024**

Mr. Abdul Naeem Pirzada, Advocate for petitioner.

Mr. Khuda Bux Chohan, Advocate for respondents No.2 & 3.

Mr. Saeed Ahmed Wassan, Assistant Advocate General Sindh.

ORDER

Muhammad Iqbal Kalhoro, J. – Petitioner is a widow of Ram Kishan, who was an employee of Sukkur Municipal Corporation, Sukkur, working as Sanitary Worker in Union Council No.1. He died during service, reportedly on 03.09.2012. Before it, he was served with a notice of retirement on 24.05.2012 with his date of birth as 25.05.1952 instead of 25.05.1957 claimed by him. He filed, therefore, a grievance application before the Sindh Labour Court No. VII, Sukkur, but during its pendency he died. The matter thereafter was referred to the department for a consideration. Finally, an office order dated 31.12.2012 was issued stipulating date of his retirement as 24.05.2012: attaining age of superannuation. Petitioner, being aggrieved, ran from pillar to post, to establish date of birth of her husband as 25.05.1957 and not the year 1952, but to no avail. Hence this petition. With the petition, certain photo stat copies of documents have been filed including copies of some pages of service book of her late husband. At page No.39 of the file is a leaf of service book, it shows date of birth of petitioner's late husband as 25.05.1957.

2. Against such assertions, respondents have filed comments stating that in the original record, date of birth of petitioner's late husband is mentioned as 25.05.1952, and on 24.05.2012, he had completed sixty years, hence his retirement order was issued on 31.12.2012 after considering the entire gamut of controversy referred to the department by the Sindh Labour Court. Late Ram Kishan died on 03.09.2012; his case for pensionary benefits was prepared, 35% in respect of gratuity / commutation, the petitioner received all like alive person. Along with such comments, a photo stat copy of his service book has been filed, which reflects date of birth of late husband of petitioner as 25.05.1952.

3. Since only photo state copies of the two different service books of the petitioner's late husband have been filed, and both contain different dates of his birth, we do not have any means to sort out which copy of the service book is genuine and reflects the actual date of birth of petitioner's husband. This controversy in fact is factual in nature and requires evidence of the parties to establish their respective claim in connection with date of birth of late husband of the petitioner.

4. While exercising constitutional jurisdiction, we are not required to delve deeply into the controversial facts disputed by the parties and come up with a definitive opinion, and decide the controversy. We, therefore, find no merits in this petition and accordingly **dismiss** it. However, the petitioner would be at liberty to approach a proper forum for availing a proper remedy available to her in accordance with law for establishing her claim regarding date of birth of her late husband namely Ram Kishan.

The petition is accordingly **disposed of**.

J U D G E

J U D G E

Abdul Basit