

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-93 of 2017
(Abdul Rasheed versus SESSI & others)

Date	Order with signature of Judge
	Mr. Justice Adnan-ul-Karim Memon Mr. Justice Zulfiqar Ali Sangi
Date of hearing and order:- 02.02.2026	

Mr. Muhammad Mustafa Hussain, advocate for the petitioner
Mr. Ali Safdar Depar AAG
Mr. Gul Hassan Shah advocate for SESSI

O R D E R

Adnan-ul-Karim Memon, J. – The petitioner Abdul Rasheed has filed the captioned Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer.

- a. *To declare that the decision of the Respondent No.1 communicated vide its letter o. SS/CMO/KC/ADMN/2016/360 dated 30.08.2016, whereby the petitioner's representation is declined, and he is ordered to be retired w.e.f 10.03.2015 according to the matric certificate instead of being retired w.e.f. 10.03.2015, according to the matric certificate instead of 01.07.2016 as per the old service record and CNIC of the petitioner, as well as the earlier order bearing No. SS/CMO/KC/ADMN/2015 1829 dated 16.04.2015, whereby the petitioner's salary is stopped with immediate effect due to the difference of date of birth in the CNIC and the Matric Certificate, and office order No. SS/CMO/KC/ADMN/2015-1854 dated 20.04.2015 whereby the petitioner stands retired as ward boy w.e.f 10.03.2015 based on his date of birth mentioned in the matriculation certificate are unlawful, void, and of no legal effect.*
- b. *Direct the respondents to retire the petitioner as "Dresser" w.e.f 01.07.2016 as earlier communicated vide letter No. SS/CMO/KC/ADMN/2015/1337 dated 20.01.2015 issued by the Chief Medical Officer of SESSI.*
- c. *Direct the respondents to calculate and pay to the petitioner his retirement benefits and pension based on his retirement on 01.07.2016 as a Dresser.*

2. The case of the petitioner is that he joined the Sindh Employees Social Security Institution (SESSI) in 1975 and has rendered more than four decades of service. It is contended that although initially appointed as a Ward Boy, the Petitioner was assigned duties as a Dresser against a clear vacancy in 1995, his name was placed in the seniority list of Dressers, and he continued to work as such until retirement. The Governing Body of SESSI, pursuant to orders of this Court in CP No. D-153 of 2013, formally approved his up-gradation as Dresser, and therefore the Petitioner was/is denying being legally entitled to be retired as a Dresser.

3. Learned counsel for the Petitioner submits that the date of birth recorded in the service record at the time of entry into service, i.e., 01-07-1956, was consistently reflected in official documents, including the Petitioner's old NIC and CNIC. It is argued that after about forty years of service, the Respondents

could not lawfully alter the Petitioner's date of birth based on a Matriculation Certificate, particularly when the Respondent itself had issued a retirement option letter fixing the date of retirement as 01-07-2016, which was duly accepted by the Petitioner. It is urged that such action is violative of settled law, the principles of natural justice, and Article 4 of the Constitution. It is further submitted that the impugned orders stopping the Petitioner's salary and retiring him retrospectively as a Ward Boy w.e.f. 10-03-2015 were issued mala fide, in disregard of the decision of the Governing Body, and as a consequence of the Petitioner having pursued contempt proceedings. The Petitioner, therefore, seeks a declaration of the impugned orders as void and prays for retirement as Dresser w.e.f. 01-07-2016, along with payment of all consequential benefits. He prayed to allow this petition.

4. Conversely, learned AAG assisted by the learned counsel for the Respondents raises preliminary legal objections regarding the maintainability of the petition. It is argued that SESSI is a statutory body governed by its own Service Regulations and internal appellate mechanisms. It is urged that the Petitioner failed to avail the remedies available before the Appellate Committee and the Pension, Gratuity & GP Fund Committee constituted under the SESSI (Revised) Service Regulations, 2006, and therefore the constitutional petition is premature and not maintainable. Learned counsel for the respondents submits that SESSI does not have statutory rules akin to civil service rules, and reliance is placed on judgments of the Hon'ble Supreme Court and this Court, including *Commissioner SESSI v. Anwar Ali Khokhar* and *Ghulam Hafeez v. Government of Sindh*, to argue that service disputes of SESSI employees are not amenable to constitutional jurisdiction. It is also contended that the Petitioner falls within the definition of a "workman" and has an alternate remedy before the Labour Court. On merits, learned counsel for the Respondents submits that the Petitioner was only assigned temporary duties of Dresser in 1995 and did not possess the prescribed educational qualifications under the SESSI (Revised) Service Regulations, 2006. He added that the Governing Body, as a special and humanitarian measure, approved his up-gradation retrospectively; however, the issue of date of birth was neither considered nor decided at that stage. It is further argued that upon submission of the Matriculation Certificate by the Petitioner, a discrepancy in the date of birth was discovered, and after affording an opportunity of hearing, the Institution lawfully retired the Petitioner based on the date of birth recorded in the Matric Certificate. Accordingly, the Respondents' counsel submits that the impugned orders are lawful and the petition is liable to be dismissed.

5. After hearing the learned counsel for the parties and perusing the record, it is noticed that the core controversy revolves around (i) the status of the Petitioner

at the time of retirement, and (ii) the determination of his correct date of birth for retirement purposes.

6. So far as the status of the Petitioner as Dresser is concerned, the record unequivocally shows that the Petitioner was assigned duties of Dresser against a clear vacancy in 1995, his name was included in the seniority list of Dressers, and he continuously discharged those duties for about two decades. More importantly, pursuant to the orders of this Court passed in CP No. D-153 of 2013, the Governing Body of SESSI itself *prima facie* approved the up-gradation of the Petitioner from Ward Boy to Dresser. Once such approval was accorded by the competent authority, the Respondents were legally bound to give effect to the same in letter and spirit. It is a settled principle of law that an administrative authority cannot act contrary to its own decision, particularly when such a decision is taken in compliance with a judicial order. Any action in derogation thereof is unlawful and without jurisdiction.

7. About the date of birth, the law is equally well settled. The date of birth recorded in the service record at the time of entry into service is final and cannot be altered at a belated stage, i.e., after two years of service, particularly at or near the time of retirement. It is well settled that after decades of service, reliance on external documents, such as a Matriculation Certificate, to alter the recorded date of birth is impermissible at this stage.

8. In the present case, the Respondents themselves issued a retirement option letter fixing the Petitioner's date of retirement as 01-07-2016, based on the service record and CNIC, which was duly accepted by the Petitioner. This created a binding representation, and the Respondents were estopped in law from subsequently changing their stance. The subsequent reliance on the Matriculation Certificate to retire the Petitioner w.e.f. 10-03-2015, after more than forty years of service, is arbitrary, legally unsustainable, and violative of the principles of natural justice.

9. As regards the preliminary objection of alternate remedy, it is by now well established that the existence of an alternate remedy is not an absolute bar where the impugned actions are patently illegal, without lawful authority, or violative of fundamental rights. In the present case, the impugned orders were passed in disregard of the decision of the Governing Body, and contrary to settled law, this Court is fully competent to exercise constitutional jurisdiction. Furthermore, the plea that the Petitioner is a "workman" and must approach the Labour Court is misconceived in the peculiar facts of the case, as the dispute relates to retirement, pension, and service record, which fall within the realm of public law and constitutional protection, rather than an industrial dispute simpliciter.

10. In view of the foregoing discussion, this Court finds that the impugned orders whereby the Petitioner's salary was stopped and he was retired retrospectively as a Ward Boy based on the Matriculation Certificate, are illegal, arbitrary, and without lawful authority. The Petitioner was legally entitled to be retired as a Dresser w.e.f. 01-07-2016, in accordance with his service record and the decision of the Governing Body.

11. Accordingly, the petition merits acceptance and disposal in the above terms.

JUDGE

JUDGE