

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No.D-1690 of 2024

Present:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

Petitioner: Gulzar Ahmed,
Through Mr. Abdul Naeem Pirzada, Advocate

Respondents: Province of Sindh and others
Through Mr. Ali Raza Baloch, Additional Advocate
General

Date of hearing: 05.08.2025

Date of decision: 05.08.2025

O R D E R

Nisar Ahmed Bhanbhro, J: Through the instant petition, the petitioner has challenged the Notification dated 17.03.2020, issued by Director Fisheries Sukkur wherein the petitioner was conveyed his retirement from service with effect from 18.09.2018 and deduction of the excess amount received by the Petitioner from the period of 19.09.2018 to 29.02.2020 in terms of salary.

2. Case of the petitioner as born out from the pleadings is that he was appointed as Fisheries Watcher in Fisheries Department, Government of Sindh. The date of birth of the Petitioner at the time of joining the job was incorporated in the Service record as 19.09.1958. Petitioner asserted that his actual date of birth per CNIC and the matriculation certificate was 11.04.1960, to that effect petitioner filed a representation for correction of the date of birth in service record. Per claim of the Petitioner that the department corrected his date of birth in service book through an interpolation, however the date of birth of the petitioner earlier recorded in the service book was also kept intact. Petitioner continued his job till 17.03.2020, when the Fisheries department notified his retirement and ordered to recover the excess payment received by him in the shape of monthly salaries. In appeal the said order was modified and withdrawn to the extent of recovery of excess amount, despite of that District Accounts Officer Sukkur has deducted the amount of salary received during the period of 19.09.2018 until 29.02.2020 from the pension benefits. Hence this Petition.

3. On notices, the respondents No 4 and 5 filed their reply wherein they contended that the petitioner was appointed in the year 1983, per original record at the time of joining, date of birth of the Petitioner was entered as 19.09.1958. The petitioner after the lapse of about 25 years, petitioner submitted his school leaving certificate with date of birth mentioned therein as 11.04.1960. Petitioner tempered the record and got re-entered date of birth in the Service-book. The department, when spotted this forgery in the service record, issued Notification dated 17.03.2020 conveying retirement of the petitioner from 18.09.2018. Since the Petitioner deceitfully received excess amount in the shape of salary for a period of about 18 months therefore recovery was ordered.

4. District Accounts Officer Sukkur (Respondent No 6) in its reply asserted that the Petitioner has withdrawn the dual amount of salaries and pension between the period of 19.09.2018 to 29.02.2020, therefore, the excess amount received in the shape of salaries amounting to rupees 608831 has been recovered by deduction from the pension benefits of the Petitioner.

5. Mr. Abdul Naeem Pirzada, learned counsel for the petitioner contended that as per academic record the actual date of birth of the petitioner was 11.04.1960. Officials of the Department entered incorrect date of birth of the Petitioner as 19.09.1958. Petitioner substantiated his case through documentary evidence, on the basis of which his date of birth in the service record was corrected. He contended that the Petitioner ought to have been allowed to retire on attaining the actual age of superannuation, which was 10.04.2020. He contended that the petitioner served the department as a regular employee and department was aware about his date of birth earlier recorded, even the Petitioner himself approached department for correction of date of birth, but no action was ever taken. He contended that petitioner remained present on duty for the period in between 18.09.2018 till 29.02.2020, therefore, under the law the salaries paid to him cannot be recovered. He prayed that the respondents be directed to release the pension of the petitioner and further be restrained from deducting the salary amount received by the Petitioner during the intervening period.

6. Mr. Ali Raza Baloch, learned Additional Advocate General, Sindh contended that the petitioner continued his job from 19.09.2018 till 29.02.2020 and withdrawn salary without any lawful authority, he should have stopped attending the office on his own with effect from 18.09.2018. He contended that the Petitioner was civil servant, he was required to seek correction of date of birth from appropriate forum but remained indolent. He argued that under the Rules date of birth of a civil servant, once entered in the service record at the time of joining, cannot be altered or corrected at the subsequent

stage. He further argued that Petitioner received regular salary illegally after 18.09.2018 until 29.02.2020, he was required to return the said amount voluntarily but he did not. He contended that Government was competent to recover the excess amount by making adjustment from monthly pension. He prayed for dismissal of the Petition.

7. Heard arguments and perused the material available on record.

8. Contention of the Learned Counsel for the Petitioner that date of birth as recorded in the matriculation certificate and CNIC of the Petitioner would be treated as the correct and actual date of birth and accordingly Petitioner attained the age of superannuation on 10.04.2020, therefore, he should have been retired from service on the said date is without substance. No doubt under general practice the date of birth of a person is reckoned from the day so recorded in academic record. But the case of a person falling in the definition of civil servant would be weighed separately, as he is subject to the discipline of law and rules enacted for the purpose of regulating services. The Person at the time of recruitment in government service is issued appointment letter which contained the terms and conditions of his service, which he was bound to obey. The Petitioner was a civil servant, his services were governed under the Provisions of Sindh Civil Servants Act 1973 and terms and conditions of his services were set out under Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 (APT Rules) and the other rules framed by the Government in that regard. Appointment of a civil servant in the province of Sindh was subject to the conditions laid down by the department under APT Rules. Rule 12-A of the APT Rules provided that the date of birth of a civil servant once recorded at the time of joining the government job, shall be treated as final and could not be altered at subsequent stage. Rule 12 – A reads as under: -

[12-A. The date of birth once recorded by a civil servant at the time of joining Government Service shall be final and no alteration thereafter shall be permissible.]

9. Provisions of above rule leave no room for correction or alteration of date of birth once recorded at the time of joining of job to a subsequent stage. The record of a civil servant is maintained under a proper mechanism by the concerned department. For the purposes of maintaining record competent authority issued instructions, framed regulations. The Sindh Civil Service Regulations framed by the Government lay down a procedure for maintaining the record of a civil servant. Regulation 171 of the Sindh Civil Service Regulation being relevant to the case of Petitioner is reproduced as below:

171. In the service book every step in a Government servant's official life including temporary and officiating promotions of all kinds, increments and transfer, and leave of absence taken, should be regularly and concurrently

recorded, each entry being duly verified with reference to departmental orders, pay bills, and leave statements, and attested by the head of the office. If the Government servant is himself the head of an office, the attestation should be made by his immediate superior, Officiating and temporary service and leave taken prior to first substantive appointment to a permanent post should also be recorded in the service book and duly attested after verification. The Date of Birth should be verified with reference to documentary evidence and a certificate recorded to that effect stating the nature of the document relied on:

Provided that in the case of inferior Government servants, if documentary evidence is not available, the age should be determined by the appointing authority with reference to the statement of respectable persons, medical opinion, etc., and any other evidence he may think proper to take.

In the case of a Government servant, the year of whose birth is known but not the date, the 1st July should be treated as the date of birth. When both the year and the month of birth are known, but not the exact date, the 16th of the month should be treated as the date of birth.

In the case of a Government servant who is only able to state his approximate age, and who appears to the attesting authority to be of that age, the date of birth should be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment. When the date, month, and year of birth of a Government servant, are not known, and he is unable to state his approximate age, or when the appointing authority does not accept the age stated by the Government servant, the age by appearance as stated in the medical certificate of fitness, in the form prescribed in Rule II should be taken as correct, he being assumed to have completed that age on the date the certificate is given, and his Date of Birth deduced accordingly.

When once an entry of age or Date of Birth has been made in a service book, no alteration of the entry should afterwards be allowed, unless it is known that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error. Officers of a rank not lower than the Principal District Officer in the Department concerned may correct errors in the service book which are obviously clerical. Cases in which the correctness of the original entry is questioned on other grounds should be referred to a competent authority.

Finger prints of the Government servants should be recorded in the column headed "Personal marks of identification" in the service book itself. The impressions should not be taken on separate slips of paper and pasted to the service book.

Exception.-When a military employee is transferred to a civil department and assumes a civilian status or when a military employee discharged from the army without earning a pension is employed in a post in a civil department in which his military service counts towards pension, the Date of Birth to be entered in his service book or roll shall be either that entered by the Military authorities in his form of attestation when he first joined the army or, if at the time of attestation he stated only his approximate age the date arrived at by deducting the number of years representing his age from his date of attestation.

Note.- Cases in which prior to 28th September, 1938 the Date of Birth has been deducted by any other method, from the age at appointment or attestation, or cases in which Government have passed specific orders accepting a particular date of birth, need not be re-opened.

Instruction.-Officers competent to alter dates of birth should see that no change in the date of birth which will be to the advantage of the Government servant concerned is allowed unless an application in that behalf is made by the Government servant concerned within two years of the date on which his service book was opened under Sindh Civil Services Rule 167. All cases in which applications are made after the period of two years referred to above should be submitted to Government for orders. The Date of Birth is to be verified with reference to documentary evidence and a certificate is to be recorded to that effect stating the nature of the document relied on as required under Rule 171. A change in the Date of Birth should not, therefore, be allowed on the evidence which could be available to a Government servant when he entered Government service and his Date of Birth was recorded in the service book.

10. Regulation 171 supra accorded permission for correction of clerical errors in the service record only. Per record petitioner was appointed in the year 1983. Admittedly his date of birth as per record, at the time of joining the job, was entered as 19.09.1958. Petitioner remained silent and did not challenge to the said entry in the service record until 2008, when for the first time, he filed an application that his date of birth per academic credentials was 11.04.1960, therefore, and the same may be incorporated in the

service record instead of 19.09.1958. Application filed by the Petitioner remained unheeded, thus for the purposes of the determination of length of service and retirement day, the date of birth so entered in the service record of the Petitioner at the time of joining the job attained finality as the date of birth once recorded cannot be altered or corrected in lieu of the bar contained under rule 12 – A of APT Rules, thus 19.09.1958 would be treated as the date of birth for the purposes of dealing Petitioners' service. The notification dated 17.03.2020 issued by Respondent No 3 thus to the extent of date of retirement of Petitioner did not suffer from any illegality or irregularity.

11. This view finds support from the judgment of Honorable Supreme Court in the case of CHIEF SECRETARY, GOVERNMENT OF BALOCHISTAN, QUETTA and others Versus ASMATULLAH KAKAR reported as 2020 S C M R 1678, MUHAMMAD KHALIQ MANDOKHAIL Versus GOVERNMENT OF BALOCHISTAN through Chief Secretary, Civil Secretariat Quetta and another reported as 2021 S C M R 595, INSPECTOR GENERAL OF POLICE, BALOCHISTAN, QUETTA and others Versus MOHIBULLAH reported as 2022 S C M R 9, MANZAR ZAHOR Versus LYARI DEVELOPMENT AUTHORITY and another reported as 2022 S C M R 1305, ALI BUX SHAIKH Versus The CHIEF SECRETARY, GOVERNMENT OF SINDH, KARACHI and others reported as 2023 P L C (C.S.) 831 and The EXECUTIVE DIRECTOR (P&GS) STATE LIFE, PRINCIPAL OFFICE KARACHI and others Versus MUHAMMAD NISAR, AREA MANAGER, STATE LIFE CORPORATION OF PAKISTAN, PESHAWAR ZONE, PESHAWAR 2025 SCMR 249 wherein it has been held that there is no possibility or probability of alteration in date of birth of a civil servant once recorded at the time of joining the job or service.

12. Adverting to the question of recovery of salary for the extended period of the job the petitioner. Scanning of the material on record, manifested that Petitioner attained the age of superannuation on 18.09.2018. Department being the custodian of service record, should have issued notification, conveying the retirement of the Petitioner on said date but it did not. Section 13 of the Sindh Civil Servants Act, 1973, divides retirement under two stages. First stage, when a civil servant completes 20 years qualifying length of service and second stage when he attains the age of sixty years. Section 13 reads as under:-

- 13. Retirement from service.-** *A civil servant shall retire from service,-*
- (i) *on such date after he has completed [twenty] years of service qualifying for pension or other retirement benefits as the competent authority may, in the public interest, direct:*

[Provided that no civil servant shall be retired unless he has

been informed in writing of the grounds of the action proposed to be taken against him and has been given reasonable opportunity of showing cause against that action;] or

(ii) *where no direction is given under clause (i), on the completion of [sixty years] of his age.*

13. Petitioner worked in the department beyond the period of 18.09.2018 under an impression that his date of birth as recorded in the CNIC and matriculation certificate would be counted towards retirement and he remained attending the job, he was paid salary by the Drawing and Disbursing Officer for the said period. The department woke up from slumber after about 18 months and notified retirement of the Petitioner in the month of March 2020. The department cannot take any excuse for not conveying the notification of retirement of Petitioner within time. The petitioner remained serving the department and there is no complaint adverse against the claim of Petitioner, therefore, the payment of the salaries towards his duties was his right, which was accorded to him.

14. Record further reflected that Director Fisheries Sukkur division in its letter dated 17.03.2020 ordered for recovery of excess amount. Petitioner filed an appeal against the order dated 17.03.2020 before Director General Fisheries, Sindh Hyderabad. Appeal filed by the Petitioner was allowed vide order dated 30.04.2021 and the order dated 17.03.2020 was modified to the extent of Part II, seeking recovery of excess amount from the Petitioner. Department did not challenge the order dated 30.04.2021 passed by Director General Fisheries thus it attained finality. The order passed by appellate authority set at rest the issue of excess amount received by the Petitioner, which was in consonance with the provisions of West Pakistan Pension Rules, 1963 that empowered the government to effect recovery of excess amount. Under the provisions of West Pakistan Pension Rules, 1963, recovery of excess amount if received by the employee during service is subject to the determination under judicial or departmental proceedings initiated within one year of the retirement. Rule 1.8 (b) being relevant provision is reproduced for the sake of convenience:

1.8. (a).....

(b) Government reserve to themselves the right of recovery from the pension of Government Pensioner on account of losses found in judicial or departmental proceedings to have been caused to the Government by the negligence of, or fraud of such Government Pensioner during his service, provided that such departmental proceedings shall not be instituted after more than a year from the date of retirement of the Government Pensioner.

15. The provisions of Rule 1.8 (b) made it crystal clear that loss caused by a civil servant to the government can be recovered, if the departmental proceedings for recovery were initiated within one year of the retirement of the civil servant. When confronted to this this Legal position Learned AAG, frankly conceded that no departmental proceedings were instituted against the petitioner for recovery of excess amount, on the contrary his appeal was accepted by the appellate authority and order for recovery of excess amount was withdrawn. Under the pension rules, government can require a pensioner to refund an amount which was received by him in excess through fraud or forgery while in regular service subject to the outcome of departmental proceedings initiated within one year of the retirement and beyond the said period government was precluded from taking coercive measures of recovery. Admittedly no departmental proceedings were initiated against the petitioner to recover the excess amount received by him in terms of the salary, therefore at this belated stage, action of recovery was not warranted under the law.

16. The salary admittedly was not a bounty on the part of the state, but it was an act of the employer to compensate the employee for the services rendered and as discussed supra that Government, under the provisions of Rule 1.8 (b) of the West Pakistan Civil Servant Pension Rules, 1963 can recover the excess payment from the pension of a retired civil servant if determined through judicial or departmental proceedings for the loss to have been caused to government by the negligence or fraud of such pensioner during his service instituted within one year of the retirement. Since there was no allegation that the petitioner was not present on duty during the said period, therefore, the action of recovery by way of deduction from the monthly pension of the Petitioner, on the part of department and District Accounts Office was not tenable under the law, more particular when it could not established that Petitioner received the salaries mala fide, on the contrary Petitioner successfully demonstrated that he received the salary under a bona fide belief that he was still in service and would retire on 10.04. 2020 on attaining the age of superannuation.

17. The District Accounts Office, Sukkur in its reply stressed that the Petitioner withdrawn the dual benefits of pension and salary during the period of 19.09.2018 to 29.02.2020, therefore, the amount received by him in the shape of salary was deducted from the pension benefits. Though no material has been placed on record to evince that petitioner received dual benefits during the period referred supra but under the law monetary benefit of pension and salary cannot be enjoyed simultaneously. If the Petitioner has received the pension benefits for the period during which he received salaries as a regular employee, the same can be recovered from him through deductions from monthly pension. Rule 1.8(c) of the West Pakistan Pension Rules, 1963 empowered

the government to recover the excess amount if paid towards pensionary benefits from the retired civil servant at any time. Rule 1.8 (c) reads as under:

1.8 “(c) In case the amount of pension granted to a Government servant be afterwards found to be in excess of that to which he is entitled under the rules shall be called upon to refund such excess.”

18. District Accounts Office was mandated under the rules to effect recovery of excess pension if received, but not the recovery of amount of salary paid to the petitioner. The language of the pension rule 1.8 (c) contained the words “if found” and “called upon”, which impliedly necessitated for holding of an inquiry by providing a right of audience to against the accused pensioner before taking any adverse action. It appears that the Accounts Office Sukkur at its own made deduction of the amount from the pension benefits, as much as the action so taken tantamount to denial of right of fair trial to the Petitioner enunciated under article 10 – A of the Constitution. The Petitioner was condemned unheard before taking punitive action that resulted in impinging his fundamental rights, the petitioner should have been given an opportunity of hearing before effecting recovery through deduction of amount from his pension benefits.

19. For what has been discussed herein above, a case for indulgence of this Court under its writ jurisdiction conferred under article 199 of the Constitution for judicial review is made out, consequently the action on the part of District Accounts Sukkur for at source deduction of amount equal to salary received by the Petitioner from the period of 19.09.2018 to 29.02.2020 is declared as illegal, without any lawful authority, nullity and accordingly set at naught. The amount deducted from the pension benefits on account of alleged excess salary shall be paid back to the Petitioner. The Respondents, however, shall be at liberty to call upon the Petitioner to refund the amount of pension, if any received in excess, strictly in accordance with law and pension rules.

The petition stands disposed of in above terms.

JUDGE

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