

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

CP No. D- 2722 of 2018

Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Muhammad Saleem ----- Petitioner

Versus

Federation of Pakistan and others ----- Respondents

Date of Hearing : 14.01.2019

Ms. Nasim Abbasi, Advocate for Petitioner

ADNAN-UL-KARIM MEMON,- Basically the Petitioner has impugned the letter dated 2nd June 2016 issued by Civil Aviation Authority (CAA), whereby his actual date of birth i.e. 1st July 1957, recorded in his Service Book, stood good and his retirement from service of (CAA) was due on 1.7.2017.

2. Brief facts of the case, in nutshell are that on 24.11.1981, the Petitioner applied for the post of M.T. Driver in (CAA). At the time of his appointment, Petitioner disclosed his date of birth as 1.7.1959, on the basis of his NIC and at that time in the service book, his date of birth was wrongly recorded as 1.7.1957, instead of 1.7.1959. Petitioner next added that as per directives issued by the high-up of Civil Aviation Authority, his date of birth was corrected in the service book i.e. 1.7.1959. Petitioner has submitted that all of a sudden a letter dated 6.3.2015 was served upon the Petitioner with covering letter dated 17.3.2015, which disclosed that he would be retiring from the service of Civil Aviation Authority on 1.7.2017. Petitioner being aggrieved by and dissatisfied with the aforesaid action of the Respondents had moved an Application dated 20.3.2015 which was turned down by CAA, without any lawful justification vide letter dated 7.4.2015; that thereafter, the Petitioner moved an Appeal on 28.8.2015 through proper channel and the same has been rejected vide letter dated 2.6.2016 inspite of the fact that the actual date of

birth of the Petitioner had already been corrected vide letter dated 31.3.2011. Petitioner being aggrieved by and dissatisfied with the aforesaid letter has filed the captioned petition on 11.9.2018.

3. Ms. Nasim Abbasi, learned counsel for Petitioner has insisted that the Petitioner's actual date of birth is 1.7.1959 but in the first hand on the basis of Auditor it was changed as 4.12.1958 and now without any lawful justification it has considered as 1.7.1957; that since the petitioner was near to retirement, therefore, he moved an Appeal dated 19.6.2017, but till July 2017 no response from the Respondent side has come; that the impugned letters issued by CAA are sketchy, contrary to law and judgments passed by this Court as well as Hon'ble Supreme Court of Pakistan. Hence, the same is liable to be set-aside; In support of her contention, she relied upon various documents annexed with the memo of petition and argued that the act of Respondents is against the law; that once the date of birth of the Petitioner has been corrected in the service record, the same cannot be changed; that the Respondents have acted with *mala fide* intention and in violation of law; that the Respondents have attempted to deprive the Petitioner from his fundamental rights by substituting his service record by showing the date of birth of the Petitioner as 1.7.1957 which has never been recorded / entered in the Petitioner's service book; that Respondent No.2 has malafidely mentioned the date of birth of the Petitioner as 1.7.1957; that once his date of birth was recorded in the service book, the doctrine of promissory estoppel will be applicable in the case of Petitioner and Respondents cannot be allowed to retract from it under the law; that the Respondents cannot challenge the authenticity of the document of the Petitioner relating to his date of birth; that the Respondents plea cannot be accepted that they committed irregularity in entering the wrong date of birth of the Petitioner; that rule of locus poenitentiae is applicable to the case of the Petitioner; that once a right has accrued in favour of the petitioner that cannot be taken back. She prayed for allowing the instant petition on the aforesaid pleas.

4. We have considered the contentions of the learned counsel for the petitioner and perused the material available on record. It may be stated that in view of urgency shown by learned counsel for the Petitioner, she has argued the entire case on merits.

5. The foremost question in the present proceedings is whether the date of birth of the Petitioner is 1.7.1959 or 1.7.1957?

6. We have gone through the record. It appears that the Petitioner was appointed as M.T. Driver on 1.12.1981 and at the time of recruitment he had submitted copies of certain documents disclosing his date of birth as 1.7.1957. The Petitioner was mindful of the fact that in the said document he mentioned his date of birth as 1.7.1957 instead of 1.7.1959.

7. We have noticed that under the law once the date of birth is entered in the service record that cannot be subsequently changed except within a period of two years from the date of appointment of the person in government service. From the perusal of rule position, it is clear that the petitioner can be held responsible that he did not file his case for correction of his date of birth from any forum within a period of two years from the date of joining in service as provided under the law; it appears from the record that his date of retirement from service was due on 1.7.2017, whereas he has filed the present petition on 11.9.2018 for the above relief.

8. The Petitioner on the other hand has failed to give any explanation for such inordinate delay in seeking correction of his date of birth and has not placed on record any forceful material warranting indulgence of this Court in the matter. The credential of the Petitioner prima facie show that the actual date of birth of the Petitioner is 1.7.1957 and not 1.7.1959, the Petitioner has attempted to convince us that his date of birth was wrongly entered in service book, therefore, he by taking advantage of his NIC and other documents, whereby the correction of date of birth

was purportedly made as 1.7.1959 by the Civil Aviation Authority vide letter dated 8.4.2011, but later on rejected the version of the petitioner. Petitioner has tried to justify his action that he was never at fault and he did not obtain the job on the basis of a fake document and the respondent Civil Aviation Authority did not object, therefore, they are stopped under the law to raise such objection after more than certain period. Be that as it may, the question arises that once his date of birth is entered in the documents as discussed supra, it was incumbent upon the Petitioner to get it corrected in time if he felt himself aggrieved by the fact that his date of birth has wrongly been entered in these documents, thus merely relying upon a letter dated 8.4.2011 filed by Civil Aviation Authority to claim immunity which act in our view would not clarify his position. We are of the considered view, that merely relying upon certain documents as discussed supra is not sufficient to claim that the petitioner's date of birth was 1.7.1959 and not 1.7.1957, the petitioner cannot be allowed to circumvent the well settled principle of law that the actual date of birth once recorded cannot be changed until and unless it is shown that the date of birth was wrongly entered in the service, which should be corrected; if it is so, then it should be corrected within the stipulated time and not otherwise. The Petitioner has admitted that his date of birth 1.7.1957 was mentioned in the aforesaid documents issued by the competent authority hence these admitted documents cannot be discarded when these are still holding field. It is well settled principle of law that once the date of birth of a person or employee is entered in the qualification certificate that would be final and always considered to determine the age of a person in service in superannuation i.e. 60 years.

9. We have noticed that the mode of correction of date of birth in Government / Public service as provided under Rule 12-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 which is part of the terms and conditions of the service of Civil / Public servant. It has also been well established now that a civil / public servant cannot seek alteration in his date of birth at the verge of his

retirement or otherwise in a suit and in this respect principle laid down in the case of Dr. Muhammad Aslam Baloch v. Government of Balouchistan (2014 SCMR 1723). The Honourable Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) has already dealt with the issue of alteration in date of birth.

10. We have perused the Civil Service Regulations No. 171 and Fundamental Rule. which deals with the issue of correction in the date of birth, which explicitly show that the date of birth once recorded in the service book, no alteration of the entry afterwards be allowed, unless an application in this behalf is made by the employee to the concerned quarters within a period of two years of the date on which his service book was opened.

11. In the light of the documents placed on record by the parties and admission of the petitioner that the actual date of birth of the petitioner was not entered by the Respondents in his service record which is grave mistake / negligence on the part of the Respondents for which they are liable to account for. The decision rendered by Honourable Supreme Court of Pakistan in the case of Shahid Ahmed v. Oil and Gas Development Company Limited and others (2015 PLC (C.S) 267 is guiding principle on the issue involved in the present proceedings. The Petitioner did not reserve the right to seek amendment in his date of birth at the belated stage when he stood retired from service on 1.7.2017.

12. Reverting to the plea raised by the learned counsel for the Petitioner about the principle of locus poenitentiae, we would say that it is not applicable in this case because the Petitioner retired from service on 1.7.2017. as per his actual date of birth and not on 30.6.2019 and his date of birth was not altered by the Respondents in the due process of time i.e. within two years and he remained in service till his retirement.

13. In the light of the above facts and law mentioned above, we do not see any illegality, infirmity or material irregularity in the impugned letter dated 2.6.2016 issued passed by the Respondent Civil Aviation Authority. The letter dated 2.6.2016 issued by the Respondent Civil Aviation Authority thus is found to be just and proper. Resultantly, the instant petition is dismissed in limine along with pending application(s).

JUDGE

JUDGE

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