

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C.P. No. D-2105 of 2016

(*Mst. Bhalan V/S The Province of Sindh & others*)

Date	Judgment with signature of Judge
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Present:

Mr. Justice Aqeel Ahmed Abbasi &

Mr. Justice Muhammad Faisal Kamal Alam

Petitioner : Through Mr. Nisar Ahmed Bhanbhro, Advocate.

Respondents : Nemo for Respondents.

Date of hearing : 11.05.2016

Date of Judgment : 11.05.2016

J U D G M E N T

Muhammad Faisal Kamal Alam, J: The Petitioner through instant Petition has impugned Office Order dated 19.11.2015 passed by Respondent No.3 (District Health Office Khairpur), whereby she stood retired from service with effect from 20.10.2015, after attaining the age of superannuation. Following relief is claimed in the petition.

- “a. *That this Honourable Court may be pleased to issue writ in favour of the petitioner, declaring thereby the acts of Respondent of retiring the petitioner from services by manipulating her date of birth in service book as illegal, without any lawful authority, null and void, and having no legal sanctity in the eyes of law.*
- b. *To set aside the impugned office order dated 19.11.2015, directing thereby the Respondents to continue her services as DAI till she actually completes 60 years of her age.*

- c. *To suspend the operation of impugned office order dated 19.11.2015 till the final disposal of this petition.*
- d. *To grant any other relief deemed fit and proper under the circumstances of case.”*

2. Undisputed facts of the petition are that the Petitioner was appointed as DAI (Midwife) in BS-02 vide Appointment Order dated 20.10.1990.

3. The grievance of the Petitioner is that she has been retired prematurely by respondents through impugned order; according to petitioner she has ten more years of service left and has not attained the age of superannuation, that is, sixty (60) years. In support of her stance, petitioner has placed on record her CNIC (Computerized National Identity Card), on which, her date of birth is mentioned as 1965 and according to such date, the petitioner will attain the age of superannuation (60 years) on 09.11.2025. With the Petition, relevant pages from the petitioner's Service Book have also been appended, which includes Physical Fitness Certificate dated 21.10.1990. However, in type page-3 of her Service Book (Page-13 of Court File) date of birth of Petitioner has been entered as 21.10.1955, both in figure and words and the same is further verified by the Certificate (dated 21.10.1990) issued by the concerned Civil Surgeon; type page-2 of Service Book.

4. We have heard learned counsel for the petitioner and have examined the record. As per the official service record of petitioner, she has attained the retirement age of 60 years on 19.11.2015 and the impugned office order has been issued by taking into account her date of birth as mentioned in the official record. Even otherwise, all post retirement benefits including pensionery benefits have been allowed to petitioner.

5. It is pertinent to note that Rule 12-A of Sindh Civil Servant (Appointment, Promotion and Transfer), Rules 1974, in clear terms provides that date of birth recorded in official record at the time of joining Government Service shall be considered as correct and conclusive. This Rule time and again has been duly approved by various judicial pronouncements including a recent decision of our Court reported as 2015 PLC (CS) 883-Ghulam Ali Bughio Versus The Province of Sindh. In the aforecited decision also, the petitioner after his retirement from the Irrigation Department filed a Constitutional Petition and assailed the order of his retirement. However, after having examined the case law on the subject, Constitutional Petition was dismissed with certain adverse observations against that petitioner. It would be advantageous to reproduce herein under the relevant portions of the above decision_

“41. Prior to the incorporation of Rule 12A in the Civil Servants [Appointment, Promotion and Transfer] Rules, 1973, the Hon'ble Supreme Court of Pakistan in the case of Syed Iqbal Haider v. Federation of Pakistan and another [1998 SCMR 1494] while, approving the challenge of authenticity in the date of birth ['DoB'] within a period of two years only in service record and not beyond the period of two years of joining of service, has observed as follows:---

"12. We may also refer to the submission made by the learned Attorney-General that, in Government service, an employee cannot make any application for change in his date of birth after two years. On analogy, such rule should also be followed in judiciary, which otherwise would lead to, serious complications, and open a pandora's box. Similarly, authenticity of date of birth recorded in the documents cannot be challenged belatedly, specially beyond the abovementioned period."
[Underlining is ours]

42. Likewise, the Hon'ble Supreme Court of Pakistan while, dilating upon the filing of the cases at the 'verge of retirement' and deprecating such practice of the filing of cases for change of date of

birth ['DoB] has observed in the case of Qamaruddin v. Pakistan through Secretary, Establishment Division Islamabad and another [2007 SCMR 66] as follows:---

"5. ... We may observe that lately a tendency has developed whereby unwarranted claims, attempting to show error in "date of birth" are asserted towards retiring age by fabricating or manipulating documents in that behalf. Obviously such practice must be discouraged and effectively curbed. Additionally, the grievance agitated before us do not make out any substantial question of law having public importance."

45. The petitioner's attempt at the verge of retirement after serving his department for decades has failed to offer any plausible explanation either in the Constitutional Petition or before us to justify the in-ordinate delay for correcting his so-called actual date of birth ['DoB'].

46. Moreover, the petitioner at the time of joining the service decades ago also did not 'reserve' his right if any, to seek amendment subsequently in his date of birth ['DoB'] nor otherwise, placed before us reliable materials reflecting that he had/has approached any competent/appropriate forum for correction of his date of birth ['DoB'], during his service with respondents within two years of joining the service or otherwise.

47. It is significant to note, that the petitioner has now already stand 'retired' from the service w.e.f. 14th September, 2014 [A.N], pursuant to Notification No.A-II/2-4/94 [410]: dated 3rd June, 2014."

The present case of petitioner cannot be distinguished from the above cited case, in which reliance has been placed on the Judgments of Honourable Supreme Court as well on the subject controversy.

6. With regard to contention of petitioner's counsel that petitioner's correct date of birth should have been taken from her CNIC, as it is an official document relating to proof of age, and according to which, the petitioner will attain 60 years of age on 20.10.2025; such argument cannot be accepted, for the reasons that the CNIC produced by the petitioner at a belated stage has been issued after the retirement of petitioner from service, that is, on 09.11.2015 (issuance date), whereas,

she stood retired with effect from 20.10.2015 as mentioned in the above impugned order. Secondly, the petitioner has not placed on record her earlier CNIC or any other official document in support of her claim. The petition is completely silent about the fact that what steps the petitioner took to get her official service record corrected, while she was in service. Thirdly, this apparent contradiction about date of birth is a pure question of factual controversy and cannot be resolved in a writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Even otherwise, issue at hand does not fall within the ambit of writ jurisdiction as it is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, as, inter alia, the issue in hand pertain to an order of retirement from service by the departmental authority, as envisaged in Section 2 (a) of the Sindh Service Tribunal Act, 1973, and can be otherwise assailed before Service Tribunal in accordance with law. Consequently, the present Petition being devoid of any merits, was accordingly dismissed, vide short order dated 11.05.2016, and foregoing are the reasons for such short order as referred to hereinabove.

JUDGE

JUDGE