

Judgment Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 2623 of 2015

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioner : Gul Hassan through Mr. Mangal
Meghwar, Advocate.

Respondents 2 & 3: through Mr. Ishrat Ali Lohar, Advocate.

Mr. Ashfaq Nabi Qazi, Assistant Attorney
General

Date of hearing & decision: 07.12.2021

ORDER

ADNAN-UL-KARIM MEMON, J: - Through this petition, the petitioner has prayed for a direction to respondent No.3 to recall/withdraw the impugned order dated 15th July 2015; and, he may be allowed to retire from service in the year 2023, as per his first entry in the service book, ascribed by the respondent-department as well as per his CNIC, which is his legal and fundamental right.

2. Brief facts of the case are that the petitioner was appointed as Sanitary Worker in Cantonment Board vide letter dated 17.03.1993. Per petitioner, in his Service Book which was being maintained by respondent No.3, his year of birth was/is written as 1963 which also corresponds to his NIC; and, according to which the petitioner will require to retire from service in 2023, but the petitioner surprisingly received a letter dated 15th of July 2015 from respondent No.3 informing him that he stood retired from service on 30.06.2010 and his pension case was moved to the establishment with effect from 1.7.2010; he being aggrieved by and dissatisfied with the impugned letter preferred departmental appeal dated 12.10.2015 but no heed was paid; petitioner averred that the impugned letter has been issued in violation of law; that a public servant cannot be retired with retrospective effect. He prayed for allowing the instant petition.

3. We have heard learned counsel for the parties and perused the record with their assistance. Primarily, this constitutional petition is filed under Article 199 of the Constitution of Pakistan for issuance of the writ of Certiorari / Mandamus to call for the records relating to the letter dated 15.07.2015 whereby he has been retired from service of respondents with retrospective effect and seeks annulment of letter discussed supra; and allowing the petitioner to continue in service till 2023 following his actual date of birth mentioned in the service record.

4. The foremost question in the present proceedings is whether the date of birth of the Petitioner is 1.1.1963 or 1950?

5. We have scanned his service file and found that at the time of his appointment, he had submitted his old NIC in which his year of birth was 1963; and, the petitioner submitted his driving license which was a mandatory requirement for the subject post which disclosed his date of birth as 1950; that subsequently after the passage of few years, when the concerned official checked the service record/file of the petitioner, he found contradictions between the date of birth in NIC and driving license; hence he reported the matter to CEO, and the CEO directed verification of his date of birth from NADRA, subsequently Deputy Director NADRA vide letter dated 14.07.2015 informed that the actual date of birth of petitioner is 1950.

6. Looking at the above facts and circumstances of the case, this Court vide order dated 2.11.2021 directed the NADRA to verify the actual date of birth of the petitioner, who in compliance submitted a report before this court on 23.11.2021, and the same report was confronted to the learned counsel for the respondents who sought time to get instruction; and today he candidly submitted that his date of birth has been corrected, based on the judgment and Decree of the learned IVth Senior Civil Court Hyderabad in F.C Suit No.465 of 2020. From that Judgment it transpires that though the petitioner's date of birth in his old NIC was 1963, it was entered as 1950 while preparing his CNIC in 2004. Thus he filed suit for declaration, whereafter his date of birth in his CNIC was corrected from 1950 to 1963. When confronted with such facts, learned counsel for respondents conceded; hence the petitioner will be allowed to retire

from service upon reaching the age of superannuation i.e. 60 years in 2023.

7. The credential of the Petitioner prima facie show that his actual date of birth is 1963 and not 1950, which is supported by the judgment and decree passed by the learned IVth Senior Civil Court Hyderabad in F.C Suit No.465 of 2020. In any case, his service record has always carried his date of birth as 1963 and this is not a case where a Decree was obtained to change service record.

8. In the light of the above facts and law mentioned above, we do see illegality, infirmity, and material irregularity in the impugned letter dated 15.07.2015 issued by the respondents, which is set aside. Resultantly, the instant petition is allowed as per prayers (a) and (b). Petition sands disposed of with the pending application(s) with no order as to costs.

JUDGE

JUDGE