

[Sindh High Court]

Before Muhammad Shafi Siddiqui, J

ALI AHMED LUND

Versus

FEDERATION OF PAKISTAN through Secretary Establishment Division and 3 others

Suit No.519 and C.M.As. Nos.4203, 5329, 5330 of 2014, decided on 29th May, 2014.

Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---

---R. 12-A---Correction of date of birth in service record---Scope---Contention of plaintiff was that his date of birth was 2-4-1956 instead of 2-4-1954---Validity---Plaintiff passed Central Superior Service examination in the year 1983 and became civil servant in the said year and he had been since then maintaining his date of birth as 2-4-1954---Employee could not rectify his date of birth after insertion of R.12-A in Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---After 30 years of service it had revealed to the plaintiff that his actual date of birth was 2-4-1956---Once date of birth in the record at the time of joining service was mentioned the same should be final and no alteration was permissible--- Insertion of R.12-A in Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 was logical and statutory in nature---Suit being not maintainable was dismissed in circumstances---Plaintiff had reached to the age of superannuation and any salary, perks, privileges or any benefits availed subsequent to the age of superannuation should be returned forthwith.

Ahmed Khan Dehpal v. Government of Balochistan 2013 SCMR 759 rel.

Afzal Ali holding brief for Yawar Farooqui for Plaintiff.

Ms. Ghazanfar Tabbasum State Counsel.

Safdar Ali for Applicant/Intervener.

Date of hearing: 29th May, 2014.

ORDER

MUHAMMAD SHAFI SIDDIQUI, J.--- Mr. Ghulam Akbar Jatoi, Advocate undertakes to file power on behalf of plaintiff.

Adjournment application has been filed by the previous counsel for the plaintiff who is stated to be unwell. The application is taken on record. Office is directed to assign CMA number to this application. However, the application is dismissed on account of the fact that plaintiff has engaged another counsel. The plaintiff is also present in person who confirms that he has engaged Mr. Ghulam Akbar Jatoi.

Learned counsel for the plaintiff argued that this suit has been filed to rectify the error in the date birth of the plaintiff as 2-4-1956 instead of 2-4-1954. It is contended by Mr. Jatoi that along with the plaintiff they have filed certificate of Matric, Board of Intermediate, NIC as annexures and has also shown smart card recently issued. He also states that even in the old and new passports the date of birth is mentioned as 2-4-1956. He submits that it is the right of the plaintiff to get the date of birth corrected in all official records including the service record.

Learned State Counsel has assisted this Court and submits that the Annual Confidential Report is being issued since he became civil servant and joined the service and he has been mentioning his date of birth as 02-4-1954 and as such this delay in rectification of the service record is uncalled for and it only smells mala fide. Learned State Counsel further submits that in terms of Rule 12A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 the date of birth once recorded at the time of joining government service shall be final and thereafter no alteration in the date of birth of a civil servant shall be permissible.

Learned counsel for the intervener also relied upon recent pronouncement of Hon'ble Supreme Court and submitted that suit is not maintainable.

Heard the learned counsel and perused the record. Admittedly the certificates as well as the identity card which are annexed with the plaint show the date of birth of the plaintiff as 2-4-1956, however, the question before the Court is not the rectification of date of birth but in fact the question is as to whether such rectification can be made in the service record of the plaintiff. The plaintiff apparently passed CSS in 1983 and became civil servant in 1984 and he has been since then maintaining his date of birth as 2-4-1954. Previously before the amendment in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 it was the privilege of the employee to rectify the date of birth in the record including the service record whereas after insertion of Rule 12A which was inserted by SRO 521(I)/2000 dated 31st July, 2000 it is not permissible for the applicant/employee to get his date of birth rectified. This question came before the Hon'ble Supreme Court in the case of Ahmed Khan Dehpal v. Government of Balochistan (2013 SCMR 759) wherein it is observed that after so many years the idea to have the date of birth altered appeared to be an afterthought of the civil servant. In this case also it is almost after 30 years of service when it revealed to plaintiff that his actual date of birth is 2-4-1956. It was observed by the Hon'ble Supreme Court that the question was as to how the civil servant, who joined the service in 1982, could not know about his actual date of birth despite the passage of more than two decades, especially when at various stages during his studies as well as service he filled many examination forms, pro formas as well as service book. In the judgment of the Hon'ble Supreme Court the case of the employee/civil servant was that even in the documents of Matric and Intermediate certificates date of birth was wrongly mentioned whereas in the instant case learned Counsel for the plaintiff pleaded that though the date is rightly mentioned, however in the service record it is wrongly mentioned as 2-4-1954 instead of 2-4-1956.

In view of the amendment in the Civil Servants (Appointment Promotion and Transfer) Rules, 1973 such right of correction in the date of birth was taken away absolutely and it was clarified that once the date of birth in the record at the time of joining is mentioned the same shall be final and no alteration is permissible.

Such insertion of 12A is logical as at the twilight of the career it could only be termed as mala fide. The instant suit filed by the plaintiff is not simpliciter a correction of the date of birth in fact it is correction in date of birth in the service record. Had it been simple suit for declaration that his date of birth is to be rectified. Rule 12A of 1973 would not have been applied but in instant case, service record was sought to be corrected and in terms of Rule 12A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 such is barred. The strength and power of Rule 12A is statutory.

The issue of maintainability of the suit was framed earlier and parties were also put on notice. Even on the last date the plaintiff was present along with his counsel and also today he is present along with his newly engaged counsel and appreciate that he and his counsel tried to assist the Court. As far as the maintainability of the suit is concerned, the point involved has already been decided in the case referred above and in view of the judgment of Hon'ble Supreme Court the suit is not maintainable. The suit is therefore, dismissed along all pending applications.

The plaintiff seems to have reached the age of superannuation on 1-4-2014 and hence any salary, perks, privileges or any other benefits availed subsequent to the age of superannuation shall be returned forthwith.

ZC/A-155/Sindh

Suit dismissed.