

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Agha Faisal

C.P. No. D-968 of 2021

K-Electric  
Versus  
NIRC & others

Date of Hearing: 20.03.2023

Petitioner: Through Mr. Ayan Mustafa Memon Advocate.

Respondents No.1 & 2: None present.

Respondents No.3: Through Mr. Muhammad Saleem Khaskheli,  
Advocate.

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- This petition is arising out of the concurrent findings of two forums below i.e. NIRC Single Bench and NIRC Full Bench. The root cause of this petition is a retirement letter, which was issued to the employees of the petitioner, including respondent No.3, which does not reflect the correct facts as far as the retirement date corresponding to the date of birth is concerned.

2. We have heard the learned counsel and perused record.
3. Briefly stated facts are that petitioner has approved the list of all those employees whereby date of birth was rectified/corrected by the management on 17.10.1998. Such letter/list is available on record as Annexure P-5 wherein respondent No.3's date of birth is rectified as 30.06.1953 instead of 01.01.1950. While this approval remained undisputed for a long period of time, all of a sudden on 22.03.2012 a retirement letter was issued to respondent No.3 on the strength of previous date of birth (01.01.1950) and on the basis of such record, on reaching age of superannuation the retirement letter was issued to

respondent No.3, notwithstanding the fact that the date of birth of respondent No.3 was revised by the management of petitioner on 27.10.1998, as referred above and that no concrete material was available to form a different view than as recorded last.

4. Aggrieved of it, a grievance petition was filed before NIRC Single Bench by respondent No.3 on 09.04.2012 which was disposed of as under:-

*“5. Admittedly the petitioner has been retired on 30.06.2013 and prior to his retirement, there was a stay order in favour of the petitioner dated 09.04.2012. The petitioner while availing time of his employment as contended by him, in CNIC his date of birth is written as 01.01.1953 while in the employment card his date of birth is written as 30.06.1953. In annexure P/5 at serial No.364, date of birth of Dur Muhammad is written as approved date of birth as 30.06.1953, which is as per written statement unofficially obtained from the office. Since the petitioner has already been retired as such further proceedings in the matter shall serve no useful purpose except wastage of time. There is no reasonable or plausible rebuttal of the contention of the petitioner on the record. Petitioner has been receiving salary till retirement and if other dues/outstanding of the retirement, he also becomes entitlement of the same. This petition, after retirement of the petitioner on 30.06.2013 is hereby disposed off. No order as to costs. File be consigned to record room after is due compliance.”*

5. The above order was assailed by petitioner before NIRC Full Bench and no interference sensed, as the order was maintained vide impugned order, hence this petition.

6. At the very outset we have inquired from Mr. Ayan Mustafa Memon, learned counsel appearing for petitioner, as to what is the jurisdictional defect in the orders of two forums below, he submitted that NIRC Single Bench had no jurisdiction to dispose of the grievance petition without recording of evidence, which order was maintained by NIRC Full Bench, and hence petitioner was deprived of the proper procedure required.

7. We then enquired as to what material was available with the petitioner that has triggered petitioner to recall the rectified date of birth, learned counsel for petitioner has no reply, except that he would have cross questioned the respondent No.3 in this regard. He has only relied upon a letter of 22.03.2012 which was issued to respondent No.3 on the strength of previous date of birth, though it was rectified subsequently.

8. Last contention of the petitioner's counsel that evidence has not been recorded by the two forums below is also not convincing in the sense that since petitioner had no prima facie material to place it before the NIRC, there was no logic or justification in keeping the matter for evidence. Even on being repeatedly asked as to what material he has with him in this regard, he had no answer. We are also unable to reconcile the contentions of Mr. Ayan that since he has already superannuated the respondent, any reply to a question in cross examination could be a remedy for his restoration. Better course would have been to issue him a show-cause and then such decision should have been taken. As of now it is too late for such recourse.

9. More importantly, by the time the order was passed by NIRC Single Bench, respondent No.3 was retired on reaching the age of superannuation even on the basis of modified date of birth. In terms of letter/list referred above nothing could have been achieved, had the matter been posted for recording evidence. Respondent No.3 has worked for the period, which is disputed by the petitioner, and he was paid accordingly. The length of service excluding the disputed period was enough to avail the post-retirement benefit, if any, which is also conceded by learned counsel for petitioner.

10. In view of above, we do not find any reason to interfere in the concurrent findings of two forums below. The petition as such is dismissed along with pending application.

Dated: 20.03.2023

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