

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

C.P. No. D-329 of 2015

Present:

Mr. Justice Zafar Ahmed Rajput

Mr. Justice Khadim Hussain Tunio

Petitioner : Khuda Bux Kharos son of Muhammad Bux,
through Mr. Faiz Muhammad Larik, Advocate

Respondents : 1. Assistant Executive Engineer, Lakhi
Drainage Sub-Division at Shikarpur.

2. Executive Engineer, Shikarpur Drainage
Division, Shikarpur.

3. Project Director, SCARP, Irrigation, Sukkur

4. Province of Sindh, through Secretary
Irrigation Department, Govt. of Sindh,
Through Mr. Naimatullah Bhurgari, state counsel.

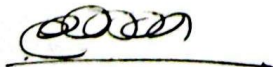
Date of hearing : 01.11.2017

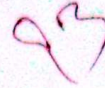
Date of order : 01.11.2017

ORDER

KHADIM HUSSAIN TUNIO, J. Through captioned petition, the petitioner has
prayed for the following relief (s):

- a. *Direct the respondents to recall/set aside the impugned Office Order No. XEN/SDD/EC/S.M/308, dated 19.3.2013, wrongly and erroneously issued by the respondent No.2 and to allow the petitioner to join back and continue his service till the actual date of his superannuation/retirement viz. 31.1.2022.*
- b. *Direct the respondents further to pay the monthly salaries from 19.3.2013 till the date when the petitioner is allowed to join back his duty/service in the department and continue paying the same to the petitioner till the actual date of his retirement without any gap.*






2. Learned counsel for the petitioner has contended that the petitioner was appointed as Helper in the Irrigation Department on 01.07.1985 and his date of birth was initially recorded in Service Book by the concerned clerk wrongly as 07.04.1953 subsequently the same was corrected as 09.06.1955 by the clerk without bringing it into the knowledge of petitioner. He has further contended that the actual date of birth of the petitioner is 01.02.1962, which is incorporated in his school record as well as old N.I.C., but the respondents on the basis of incorrect date of birth mentioned in the Service Book, issued impugned Order dated 19.3.2013 whereby the petitioner was retired from his service with effect from 01.01.2013 on the ground of so called request of the petitioner, which was in fact never made by him. He has also contended that after receiving the impugned order, the petitioner immediately approached the respondent No.2 for recalling it; so also, he made representation/appeal on 13.11.2014 to respondent Nno.3 but they did not pay any heed; hence finding no other alternative, he maintained instant petition.

3. On the other hands, the learned State counsel has maintained that the petitioner was appointed initially on work charge basis in the Year 1969 in WAPDA and the original Service Book of the petitioner was prepared and maintained by WAPDA wherein his date of birth was entered as per medical fitness certificate issued by the then medical officer. He has further maintained that the first entry in Service Book is considered as the last entry if the same is not challenged immediately. However, in the instant case, the petitioner was retired on his own written request made to respondent No.2 after completion of compulsory service of 25 years and his son Ghulam Mustafa was appointed as helper vide order dated 07.01.2013 at place of

petitioner; hence, the respondents are not liable to re-employ the petitioner being a retired employee and this petition is liable to be dismissed, even otherwise the petitioner being civil servant cannot maintain this petition against his retirement in view of Art. 212 of the Constitution of Islamic Republic of Pakistan, 1973 (herein after the "Constitution").

4. We have considered the arguments of learned counsel for the petitioner, State counsel and gone through the material available on the record.

5. Admittedly, the petitioner was a government servant and the subject matter relating to his reinstatement in service pertains to the terms and conditions of the service hence, the jurisdiction of this Court to entertain this petition under Art. 199 of the Constitution is barred in view of Article 212 of the Constitution. In case of **GOVERNMENT OF SINDH THROUGH SECRETARY EDUCATION AND LITERACY DEPARTMENT AND OTHERS VS NIZAKAT ALI AND OTHERS (2001 SCMR 592)**, the Hon'ble Supreme Court of Pakistan has observed that the *High Court should determine before entertaining such writ petitions as to whether the jurisdiction to decide such cases is barred under Article 212 of the Constitution, particularly when the matter pertains to Terms and Conditions of the employees*". It may also be observed that the petitioner through instant petition seeks correction of his date of birth in his Service Book on the ground that the same was recorded incorrectly, which factual controversy needs serious probe by recording pro and contra evidence of the parties which cannot be done by this Court under its Constitutional jurisdiction. Reliance can be placed on case of **IJAZ HUSSAIN SULERI V. THE REGISTRAR AND ANOTHER (1999 SC 2318)**, wherein the



Hon'ble Supreme Court of Pakistan has held that "*a matter necessitating enquiry into the case 'could not be gone into the Constitutional Petition.*" Moreover, the respondents in their comments have filed copy of the application moved by the petitioner seeking his retirement and the petitioner has not controverted it by filing any object ; so also, he has not denied the fact the his one son has been appointed as helper at his place after his retirement.

6. For the foregoing facts and reasons, we have found no legal and factual merit in this petition; hence, the same is dismissed, accordingly, with no order as to costs.

