

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

**C.P No. D-202 of 2013**

[Ghazanfarullah and another v. D.G. H.D.A.& others]

**Before:**

**Mr. Justice Arbab Ali Hakro**

**Mr. Justice Riazat Ali Sahar**

|                                    |   |   |
|------------------------------------|---|---|
| Petitioners                        | : | Through Mr. Anwar H.Ansari,<br>Advocate   |
| Respondent No.1                    | : | Through Mr. S.M. Naveed Farroqui,<br>Advocate, who filed his Vakalatnama<br>today, taken on record.   |
| Respondents No.2 to 4, 6<br>and 7. | : | Through Mr. Rafique Ahmed Dahri<br>Assistant A.G. Sindh along with<br>Muhammad Nadeem Siddiqui Deputy<br>Director on behalf of respondent No.3.<br><br>Mr. Habib-ur-Rehman Assistant<br>Director (Legal) NADRA. |
| Respondent No.5                    | : | Nil   |
| Date of Hearing                    | : | <b>15.04.2025</b>   |
| Date of Decision                   | : | <b>15.04.2025</b>   |

## **JUDGMENT**

**RIAZAT ALI SAHAR. J. -** Through this petition, the petitioners contend that they have been serving as Accounts Assistants under respondent No.1 and were eligible for promotion to the post of Divisional Accounts Officer on the basis of seniority. Petitioner No.1, Naeem-ul-Hassan, was third in line for promotion upon the anticipated retirement of respondent No.5, who was to

retire on 06.02.2011. However, the petitioners have alleged that the date of birth of respondent No.5 was unlawfully altered from 06.02.1951 to 06.02.1954 in the service record in the year 2010, which extended his service by three years, depriving the petitioners of promotion. They further contend that this alteration, done 26 years after the original entry in the service book, is contrary to the principle established in the case of Ahmed Khan Dehpal v. Government of Balochistan [2013 SCMR 759] They rely on documentary evidence including service book, insurance records, matriculation certificates, NADRA CNIC data and primary school records, all showing respondent No.5's original date of birth as 06.02.1951. Therefore, they are seeking following reliefs: -

- a). That, this Honourable Court may be pleased to declare that, the act of respondent No.5 under the control of respondent No.1 had tampered and manipulated the service book after twenty six years, the date of birth was changed from 06.02.1951 to 06.02.1954 which is unlawful and illegal under section 12 (A) of Service Act, by this act the seniority of petitioner No.1 is effected who is the senior most in the department.*
- b). This Honourable Court may be pleased to direct the respondent No.4 to conduct the honest and impartial enquiry into the matter and submit the report before this Honourable Court.*
- c). That the respondents No.2, 3 & 6 may be directed to submit the record before this Honourable Court for*

*verification and genuineness of date of birth of respondent No.5.*

*d). Any other relief which this Honourable Court deem fit and proper may be awarded in favour of petitioners.*

2. Notice of this petition was issued to the respondents. In response, respondent No.2 filed objections and a counter-affidavit, stating that respondent No.5 was appointed as Accounts Clerk (B-7) on a regular basis in 1985, and at the time of his appointment, his date of birth was recorded as 06.02.1951, as evident from the face page of his service book. Accordingly, he was due to retire upon attaining the age of superannuation on 06.02.2011. However, relying on H.D.A. Circular No. 6468 dated 22.11.2001 respondent No.5 later produced a Matriculation Certificate dated July 1973, showing his date of birth as 06.02.1954, which was sent to respondent No.2 for verification on 27.07.2010 and subsequently verified. Further contended that under Rule 171 of the Sindh Civil Servants Rules Manual Vol-I, once an entry regarding the date of birth is made in the service book, it cannot be altered except in cases of a clerical error or where the original entry was made without due care by someone other than the employee. Any correction must be supported by documentary evidence, and the officer making the entry is required to record a certificate indicating the nature of the document relied upon. In this case, no such certificate was recorded at the time of the initial entry, which, according to respondent No.2, indicates a clerical error. He, therefore, opposed the petition.

3. Respondent No.6 filed his comments wherein he contends that the respondent No.5 was admitted in the Government Primary School Deh 170 Digri on 23.04.1959 with the date of birth as 06.02.1951 as per Sr. No.65/71 of General Register.

4. It is pertinent to mention that the core issue in this petition pertains to the date of birth of respondent No.5 and the consequent determination of his retirement date. However, as recorded in the order sheet dated 19.02.2020, respondent No.5 has since expired. Notwithstanding his demise, learned counsel for the petitioners has requested that the petition be decided on merits.

5. Learned counsel for the petitioners contends that the retrospective alteration of the date of birth after over two decades is illegal, manipulative, and directly affects the seniority and promotion rights of petitioner No.1. He emphasizes that Rule 171 of the SCS Rules bars any change in date of birth unless it is immediately rectified upon entry or supported by clerical error proven through documentary evidence. He referred to school and service records which consistently reflected the year 1951 as the date of birth and submitted that the change in 2010 was fraudulent and made in collusion with certain officials. He further contends that respondent No.6, in his comments, has confirmed that respondent No.5 was admitted to Government Primary School Deh 170 Digri on 23.04.1959 and his date of birth was recorded as 06.02.1951 under Sr. No. 65/71 of the General Register, as such, this official school record, being the earliest contemporaneous evidence, substantiates the petitioners' stance and discredits the

belated alteration made decades later. He also contends that such original entries are legally presumed to be correct and cannot be overridden by subsequent documents obtained to support a manipulated version.

6. Learned A.A.G. Sindh, representing respondents No.2 to 4, 6, and 7, opposes the petition. He submitted that respondent No.5 furnished a Matriculation Certificate showing his birth year as 1954, which was verified by the relevant board. He refers to H.D.A. Circular No. 6468 dated 22.11.2001 and contends that the change was made on the basis of this certificate. However, he concedes that the service book lacked the mandatory certificate required under Rule 171 to justify such alteration.

7. The Assistant Director (Legal), NADRA, present on behalf of respondent No.3, confirms that NADRA records initially reflected respondent No.5's date of birth as 06.02.1951. A subsequent application for CNIC modification was processed in 2010 on the basis of a revised matriculation certificate showing 1954. He acknowledged that no independent verification of School records or prior entries was conducted before updating the CNIC and the change was purely document-based.

8. After hearing learned counsel for the parties and perusing the record, it is evident that the original entry of the date of birth of respondent No.5 was recorded as 06.02.1951 at the time of his appointment in 1985 and remained unchanged for 26 years. The attempt to alter this entry in 2010 on the eve of his retirement is highly questionable. We observe that once an entry regarding

the date of birth is made in the service book, it cannot be altered except in the case of clerical error or where the original entry lacked due care but neither of the same has been convincingly established in this case.

9. The school record produced by respondent No.6 clearly reflects that respondent No.5's date of birth was recorded as 06.02.1951 at the time of his admission in 1959. This contemporaneous document, being the earliest available evidence, supports the petitioners' claim and casts serious doubt on the authenticity and legality of the altered date of birth. The belated change, made after decades of service, is not only inconsistent with original records but also contrary to established service rules. Moreover, Section 12(a) of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 mandates that such corrections, if any, must be made within two years of joining service.

10. The Honourable Supreme Court of Pakistan, in the case of *Ahmed Khan Dehpal v. Government of Balochistan (2013 SCMR 759)*, has categorically held that once a civil servant's date of birth is recorded at the time of initial entry into service, no subsequent alteration thereto is permissible under Rule 12-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973. The Court further observed that belated attempts to alter the recorded date of birth, particularly those made at the verge of retirement, are generally presumed to be an afterthought and thus inadmissible in law. The principle "*nemo debet commodum capere de injuria sua propria*" — no man ought

to derive any advantage from his own wrong — aptly underpins such judicial reasoning. Similarly, in *Muhammad Khaliq Mandokhail v. Government of Balochistan (2021 PLC (C.S.) 570)*, the apex Court reiterated that any correction in the date of birth must be sought within the prescribed timeframe and must be supported by incontrovertible evidence. Mere reliance on frivolous or self-serving documents is insufficient and cannot serve as the basis for rectification. The maxim "*de minimis non curat lex*" — the law does not concern itself with trifles — is applicable where the attempt to alter official records is neither timely nor substantiated with credible evidence.

11. However, it is pertinent to note that in the instant case, Respondent No.5 is not a civil servant '*stricto sensu*', but an employee of the Hyderabad Development Authority (HDA). Consequently, the stringent criteria applicable to civil servants under the aforementioned rules do not directly govern his service conditions. Nonetheless, by applying the principle "*eadem ratio, eadem lex*" — where the reason is the same, the law is the same — it is submitted that similar parameters ought to be extended to the employees of autonomous bodies such as the HDA, particularly when the circumstances mirror those involving civil servants. In this regard, it bears emphasis that Respondent No.5 did not seek any change to his date of birth for an uninterrupted span of twenty-six (26) years during his employment. His attempt to amend the same only a few months prior to his retirement casts grave doubt upon the bona fides of his claim. It is a settled

principle that "*allegans contraria non est audiendus*" — he who alleges contradictory facts is not to be heard. Respondent No.5 had ample opportunity during his long tenure to rectify any purported error but chose to remain silent; his eleventh-hour endeavour is tainted with mala fide intent to unlawfully secure an extension of service by approximately three additional years.

12. In light of the foregoing, it is further submitted that while the Sindh Civil Servants Rules are not directly applicable to employees of the Hyderabad Development Authority (HDA), which is an autonomous body, and when there is no specific rule or regulation available in "*Hyderabad Development Authority Employees (General Conditions of Service) Regulations, 1988*" with regard to subject controversy, the spirit and rationale underlying principle settled in above said cases can be judiciously moulded and applied by necessary analogy. This is essential to prevent any employee from gaining undue advantage to the detriment of others, and to uphold the sanctity and integrity of service records. Therefore, the facts of the present case are squarely covered by the principles enunciated in *Ahmed Khan Dehpal* and *Muhammad Khaliq Mandokhail*. Respondent No.5's belated request for alteration of his date of birth in 2010, after twenty-six years of service, without credible explanation or adherence to procedural safeguards, renders the impugned change illegal. It amounts to a fraud upon the service record and constitutes an abuse of process, which cannot be sustained in law. The maxim "*fraus et dolus nemini patrocinari debent*" —



fraud and deceit ought to benefit no one — finds direct application in the present matter. Accordingly, the purported alteration of Respondent No.5's date of birth is liable to be declared **void *ab initio***.

13. In view of the above facts and circumstances, allowing a change in date of birth after over two decades, especially near the time of retirement, not only undermines administrative discipline but also prejudices the rights of other employees awaiting promotion. Accordingly, this petition stands **allowed**. The alteration of the date of birth of respondent No.5 from 06.02.1951 to 06.02.1954 is declared illegal void and of no legal effect.

**JUDGE**

**JUDGE**