

Form No.HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

W.P. No. 91824 of 2017.

Ali Raza. Versus Inspector General of Police, Punjab etc.

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19.10.2023. Hafiz Naimat Ullah, Advocate for the petitioner.
Rana Shamshad Khan, Additional Advocate
General with Mr. A.D. Dhakku, Inspector (Legal)
and Muhammad Imran, Inspector PS City Jhang.

Unnecessary details apart, the facts, as
divulged in this petition, are that the petitioner, on
25.02.2008, filed an application for retirement of his
father, namely, Ali Akbar, who was serving as Sub
Inspector in Punjab Police, district Jhang. The
District Police Officer, Jhang (respondent No.2)
referred the matter to the Medical Superintendent,
District Headquarters Hospital, Jhang, for medical
examination of father of the petitioner. The Medical
Board, constituted to know the exact medical
position of father of the petitioner, opined that father
of the petitioner was unfit for further service. As
father of the petitioner was not retired on medical
grounds, he was constrained to file application, on
05.05.2008, for his retirement, w.e.f. 01.07.2008, on
completion of qualifying service of 25 years. The
petitioner, being son of deceased government

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servant, filed application for his appointment as Junior Clerk in the Police Department and no favourable order having been passed therein, he has filed this petition.

2. Learned counsel for the petitioner submits that on application submitted by the petitioner Medical Board was constituted which submitted its report which was formally translated into Invalidation Certificate, bearing No.2526 dated 17.03.2008, thus, father of the petitioner retired from government service on medical grounds, hence, the petitioner is entitled for appointment under rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974.

3. Leaned Law Officer, while opposing the submissions made by learned counsel for the petitioner, submits that since the petitioner has concealed material facts from this Court he is not entitled to equitable relief. While referring to the report and parawise comments submitted on behalf of respondent No.2, learned Law Officer submits that since the petitioner failed to prove countersigning of acclaimed Invalidation Certificate of his father and

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his retirement on medical grounds rather father of the petitioner was retired upon qualifying service at his own request, the petitioner is not entitled for appointment under rule 17-A *ibid*.

4. In exercise of his right of rebuttal, learned counsel for the petitioner submits that according to the entries in Service Book of the petitioner, which was duly signed by respondent No.2, father of the petitioner retired from government service on medical grounds, w.e.f. 01.07.2008, thus, stance of the department that father of the petitioner retired on qualifying service, is contrary to the record; that since Office of the Inspector General of Police, Punjab, Lahore (respondent No.1) and that of respondent No.2 are not on the same page, in respect of class of retirement of father of the petitioner, the stance of the petitioner is to be treated as correct; that according to Notification bearing No. 12802-6, dated 30.06.2018, father of the petitioner was retired from service on medical grounds, thus, no contrary interpretation can be introduced by the respondents and that since application, dated 05.05.2008, referred by learned Law Officer, is bereft of signatures of

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father of the petitioner, same cannot be used to his disinterest.

5. I have heard learned counsel for the parties at considerable length and have also gone through the documents, annexed with this petition.

6. The criteria for issuance and completion of Invalidation Certificate in favour of a government servant, who has been examined by the Medical Board, upon the request of his/her parent department, has been encapsulated in Notification, dated 08.08.2017, issued by the Additional Secretary, Primary & Secondary Healthcare Department, Govt. of the Punjab, operative part whereof is imaged below for ready reference: -

2. The afore-mentioned Committees/ Board shall act / perform its duties as per following Terms of Reference (ToRs):
- i)

All the persons/ Government servants applying for invalidation will first be examined by a specialist. The Specialist will forward his recommendations with full justification for the invalidation. The same specialist will not be the member of the invalidation committee / board as far as possible.
- ii)

All the Government servants considered fit for invalidation will be examined by the respective Preliminary Invalidation Committee/Board.
- iii)

The Chairman and all the members of the Committee / Board will sign the report as well as the invalidation certificate.
- iv)

The report of the invalidation committee will be submitted to the Director General Health Services, Punjab. The DGHS, Punjab will scrutinize the documents and if personally satisfied with the recommendations, will countersign the invalidation certificate.
- v)

Any discrepancy noted in this procedure will be brought to the notice of the Secretary, Primary & Secondary Healthcare Department who will direct the Appellate Medical Board to examine the reports / procedure adopted by the preliminary Committee / Board.
- vi)

The Appellate Medical Board will be empowered to over-rule the findings / decision of the Preliminary Invalidation Committee. The decision of the Appellate Medical Board, so taken, will be final.

ADDITIONAL SECRETARY (TECH.)
PRIMARY & SECONDARY
HEALTHCARE DEPARTMENT

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According to the afore-imaged Notification after issuance of Invalidation Certificate by the Medical Superintendent concerned, on the basis of opinion of the Medical Board, same is to be forwarded to the Director General, Directorate General of Health Services, Punjab, for countersigning and if the same is countersigned then it is valid for retirement of government servant on medical grounds. Insofar as the case in hand is concerned, the Medical Superintendent, District Headquarters Hospital, Jhang, through communication bearing No.13518, dated 28.09.2016, referred the matter to the Director General, Directorate General of Health Services, Punjab, Lahore, for verification of Invalidation Certificate of father of the petitioner. Further, respondent No.2, through communications bearing Nos.8111/HC-E, dated 05.10.2018, also referred the matter to the Director General, Directorate General of Health Services, Punjab, Lahore for verification of the Invalidation Certificate issued in favour of father of the petitioner. The Director General, Directorate General of Health Services, Punjab, Lahore, through communication bearing No.5663/General, dated 19.10.2018, conveyed to respondent No.2 that since

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no record relating to Invalidation Certificate, produced by father of the petitioner, was found the same was fake and bogus. In this backdrop, the Invalidation Certificate of father of the petitioner has become disputed. It is well established by now that disputed questions of facts cannot be adjudicated upon in these proceedings rather for the said purpose jurisdiction lies with the relevant forum, hence, no relief can be granted to the petitioner.

7. Another important aspect of the matter is that according to own showing of the petitioner, initially, he filed an application, on 25.02.2008, for retirement of his father on medical grounds whereupon matter was referred to the Medical Superintendent, District Headquarters Hospital, Jhang for constitution of Medical Board, through Memorandum, bearing No.2374/SRC, dated 29.02.2008. Thereafter, father of the petitioner was asked to appear before the Medical Board through communications, dated 17.03.2008, 14.04.2008, 15.05.2008 and 18.06.2008, but he did not bother to appear before the Medical Board rather he filed application, on 05.05.2008, for his retirement, w.e.f. 01.07.2008, on completion of qualifying service as a result, Notification, dated

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30.06.2008, was issued regarding retirement of father of the petitioner, hence, the retirement of father of the petitioner cannot be considered on medical grounds.

8. According to learned counsel for the petitioner, Medial Board was constituted pursuant to the application filed by the petitioner. Firstly, the question as to how petitioner could file application on behalf of his father, during his lifetime, especially when he was in service and secondly, the said application became irrelevant when his father himself filed application (imaged below) for his retirement on completion of qualifying service of 25 years.

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دہلی ایئر سب انسپکٹر پولیس آفیسر صاحب (DPO) محترم

محترم سر،

جوابی :- مودباں کے درمیان ہے کہ مودی علی اکبر SI نمبر 475F-90
جناب کے زیر سایہ اپنے ذرائع منصفی سرانجام دے رہا ہے۔
یہ کہ سائل کی سروس عمر تقریباً 26/27 سال ہو چکی ہے
جبکہ سائل کی سروس 25 سال تک ہے۔ سائل اپنی سروس نہایت
حسن طریقے سے پوری کر رہا ہے۔ ان چونکہ سائل خالی کا
مرض ہے۔ سائل کی سروس سروس نہیں کرنا چاہتا ہے۔
سروس مدت 25 سال پوری ہو کر رہی ہے۔ سائل نے فٹ لکھا ہے
ہوئی۔ لہذا منصفی حاصل کرنا چاہتا ہوں۔
لہذا سائل کے سروس 25 سال تک سائل کو ایڈوانسنگ دے
منصفی پر رضیت کیا جاوے۔
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علی اکبر سب انسپکٹر پولیس آفیسر صاحب 475F-90
تھانہ خیاب۔ نگر تحصیل ضلع جھڑ
علی اکبر سب انسپکٹر پولیس آفیسر صاحب 475F-90
Fawad-ul-Plc
15-5-08

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Though, learned counsel for the petitioner challenged genuineness of the afore-imaged application but has not been able to convince this Court as to how his oral assertion can be preferred over a written document which was duly diarized against Serial No.5000, dated 08.05.2008 and was forwarded to the relevant quarter. It is well established by now that a written document outweighs an oral assertion. Moreover, during arguments learned counsel for the petitioner has categorically argued that since the aforesaid application does not bear the signatures of father of the petitioner same cannot be used against the petitioner but a perusal of the application shows that the same was not only signed by father of the petitioner but it also bears his thumb mark.

9. While addressing the Court, learned counsel for the petitioner has referred to certain entries in Service Book of father of the petitioner to establish that retirement of father of the petitioner was on medical grounds but the said fact cannot be considered as conclusive proof especially when the same is considered while putting in it juxtaposition to the Pension Payment Order (imaged below) issued in favour of father of the petitioner: -

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1765 Annex D

پیشن دین

PENSION PAYMENT ORDER
PENSIONER'S PORTION

Name of pensioner..... علی احمد

(Designation and Grade)..... س-1

His/Her Father's name..... عبدالحمید

Husband's

Permanent address showing

Village, Tehsil..... موضع گل برائی

Identity Card No. 33202-2619516-2

Date of Birth..... 13-5-63

Date of Retirement..... 1-7-08

Length of Qualifying Service..... 25.7

Class of Pension..... Retiring

Monthly average emoluments Rs 11380/-

No. and Date of sanction of pension or letter No 11452

14.08.08 D.F. S. M. S.

According to afore-imaged Pension Payment Order, class of pension has been mentioned as “Retiring”, thus, same could not be read as that on medical grounds.

10. During arguments, learned counsel for the petitioner put much emphasis on the fact that since father of the petitioner has been held entitled for medical allowance, in addition to his monthly pension, his retirement was to be treated on medical grounds. In this regard, I do not agree with learned counsel for the petitioner for the reason that mere grant of medical allowance to a retiree does not determine the nature of his retirement rather contents

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of the Pension Payment Order are to be treated as conclusive proof in that regard.

11. Learned counsel for the petitioner has repeatedly argued that since Invalidation Certificate in favour of father of the petitioner was duly issued by the Medical Board and verified by the Director General, Directorate General of Health Services, Punjab, the same was valid one but despite repeated queries he has not been able to satisfy this Court that when no record relating to its countersigning is available as to how any sanctity can be attached to the said document.

12. It is very painful to note that learned Law Officer, while addressing the Court, has referred to dozens of documents which neither have been appended by the petitioner with this petition nor have been referred therein which means that the petitioner is guilty of concealment of material facts. It is well settled by now that a person who seeks equity must do equity and when anybody is found involved in active concealment of a fact germane for decision of a case, no relief can be granted to him rather he deserves imposition of exemplary costs. Reliance in

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this regard is placed on the case reported as Muhammad Ali and 11 others v. Province of KPK through Secretary, Elementary and Secondary Education, Peshawar and others (2012 SCMR 673), Waqar Haider Butt v. Judge Family Court and others (2009 SCMR 1243) and Member (S&R)/Chief Settlement Commissioner, Board of Revenue, Punjab, Lahore and another (PLD 2003 SC 132).

13. For what has been noted above, I see no force in this petition which is hereby **dismissed** with no order as to costs.

(Shujaat Ali Khan)
Judge

Approved for Reporting

Judge