

JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Civil Revision No.373/2018.

Muhammad Razzaq Awan **Vs.** **NADRA, Islamabad etc.**

Petitioner by: Raja Muhammad Mehtab, Advocate.

Respondents by: Syed Junaid Jaffar, Law Officer,
NADRA.

Date of Decision: **09.05.2019.**

MOHSIN AKHTAR KAYANI, J:- Through this civil revision petition, the petitioner has assailed the concurrent findings of the Courts below, whereby learned Trial Court dismissed suit for declaration and mandatory injunction filed by the petitioner, which was upheld by learned District Judge (West) Islamabad vide judgments and decrees dated 11.07.2018 & 13.09.2018, respectively.

2. Learned counsel for the petitioner has contended that the petitioner filed a suit for declaration and mandatory injunction in order to correct his date of birth i.e. 1960 but NADRA Authorities have not corrected his date of birth as 1952; that the petitioner was in possession of CNIC No.101-85-170384, which was issued by NADRA Islamabad, in which his date of birth was referred as 1960 and when new CNIC No.61101-8483439-7 was issued in the year 2012, his date of birth was wrongly referred as 1952 and as such the respondents have committed mistake in the record, which has nothing to do with the petitioner; that the respondents contested the suit by filing their written statement and during evidence the petitioner appeared in the witness box as P.W.1 and narrated his stance for correction of his date of birth but both the Courts below have not appreciated service record of the petitioner in its true perspective, in which his date of birth was referred as 1960; that the petitioner also produced Muhammad Ramzan Khan, Junior Assistant Urban Division-II, Environment Directorate, CDA, Islamabad as P.W.2, who produced photocopy of service book as Exh.P.2, copy of medical certificate as Exh.P.3 and appointment letter as Exh.P.4, which contains date of

birth as 1960 but both the Courts below have not considered the entire record and even witness of NADRA has also acknowledged before the Court that previous record of the petitioner has been destroyed.

3. Conversely, learned counsel for the respondents has contended that the petitioner has failed to substantiate his date of birth as 1960, even record of the NADRA contains the date of birth as 1952, which cannot be corrected without passing of the decree by Court of law.

4. I have heard the arguments and perused the record.

5. From the perusal of record, it reveals that the petitioner has agitated the matter through suit for declaration and mandatory injunction for correction of his date of birth in NADRA record as 1960 instead of 1952. The petitioner was given CNIC No.101-85-170384, in which his date of birth was referred as 1960 and the said photocopy of ID Card was referred as Mark-A and after expiry of the said card, when the petitioner applied for new CNIC, NADRA issued new CNIC No.611018483439-7, which contains date of birth as 1952 despite the fact that present the petitioner is serving in CDA and in service record his date of birth is referred 1960. The petitioner applied for correction of his date of birth, which has been refused and the petitioner filed civil suit. The petitioner called record keeper of CDA , who has placed record of appointment, medical certificate, service book record of the petitioner, which contains the date of birth as 1960, whereas no evidence has been produced by the respondents to refute contention of the petitioner. Even otherwise, the official witness of NADRA as D.W.1 has taken stance that the petitioner has submitted his date of birth as 1952 in the application form of NADRA, however, during course of cross-examination, D.W.1 acknowledged that no recorded has been appended with the suit nor even submitted in the Court and previous ID Card was destroyed but he acknowledged that photocopy Mark-P.1, which was manual card and issued by the respondents.

6. Keeping in view the above background, the entire case hinges upon the documentary evidence and record of NADRA but surprisingly NADRA has not tendered any evidence to substantiate their plea, especially when they have taken plea that previous CNIC of the petitioner was deposited with the respondents. The

question raised in this case requires thorough probe on the part of NADRA Authorities, who are custodian of registration record and despite expiry of considerable period, the NADRA Authorities being defendant in the main suit have not produced a single witness to substantiate their plea, whereas it is trite law that any particular plea raised by a party has to be substantiated by the person, who intends to prove that his particular fact is correct and in this case the petitioner by submission photocopy of his previous CNIC to the respondents has proved that in his previous registration record his date of birth was 1960, therefore, the onus shifts upon the NADRA Authorities to disprove this fact on the basis of some record. On the other side the respondents being defendant have taken specific stance on the basis of their own assertion that the petitioner being applicant has referred his date of birth as 1952 in his application form for CNIC submitted to the NADRA Authorities, hence, while considering Articles 119 and 122 of Qanun-Shahadat Order, 1984 the burden of proof of this particular fact, which has been raised by NADRA Authorities lies upon them, otherwise, the Court cannot believe existence of this particular plea or fact that the petitioner himself mentioned his date of birth as 1952.

7. I have seen both the photocopies of CNICs available on record, even during the course of arguments, the NADRA Authorities have accepted both the documents but they have not place anything on record i.e. application forum or any other data, through which it can be assumed that the petitioner himself has given his date of birth as 1952, therefore, this Court believes that NADRA has issued new CNIC with different date of birth. Although previous CNIC has not been placed on record due to the fact that the same has been destroyed by the respondents/defendants, therefore, it is duty of the NADRA to place the record, in which the petitioner has referred his date of birth as 1952, otherwise NADRA's plea is without any substance.

8. Even otherwise, learned Trial Court in para 4 of the impugned judgment has referred limitation against the wrong date of birth and on this technicality the petitioner has been non-suited. In essence such approach is unwarranted especially when the petitioner is Mali, an illiterate person and does not understand the law.

Even otherwise, CNIC issued by NADRA in the year 2012 and the suit was filed in the year 2017 although this seems to be record position but Courts have to go for substantial justice and are not meant to discard clear expressed right of a party on hyper technicality. The petitioner has called record keeper of CDA as P.W.2, who acknowledged service record of the petitioner and place on record service book as Exh.P.2, which contains date of birth as 1960, appointment letter as Exh.P.4, which reflects his previous CNIC numbers as 101-85-170384 and as such the available public record has not been appreciated by the Courts below.

9. The plaintiff has claimed in his suit that in his service record, his date of birth is clearly mentioned as 1960. In this regard, it is pertinent to mention here that once date of birth recorded in service record cannot be changed during service or at the end of service in the light of judgment reported as 2007 SCMR 66 (Qamaruddin vs. Pakistan through Secretary, Establishment Division, Islamabad and another) & 2018 PLC (CS)N 44 Peshawar High Court (Ghafoor Khan vs. Secretary to Government of Khyber Pakhtunkhwa Education Department Peshawar).

10. At last the respondents put appearance as D.W.1 and acknowledged that the record of previous CNIC of the petitioner has been destroyed and as such they have not submitted any valid proof to justify their plea that the petitioner has himself submitted date of birth as 1952 in NADRA record, therefore, NADRA Authorities have failed to discharge the onus, which was on their shoulder, even on the basis of their legal character as given in NADRA Ordinance, 2000 and on the basis of previous law i.e. National Registration Act, 1973. While considering above position as well as PLD 2016 [Lahore] 539 (Ahmed Nawaz Khan Bakhtiari vs. Appellate Authority and others), 2011 CLC 511 [Karachi] (Mrs. Farida Hanif vs. FOP through Ministry of Interior Affairs, Islamabad and another), 2016 YLR 323 [Sindh] (Imran Khan vs. FOP through Secretary, Ministry of Interior and 3 others) and 2014 PLC 140 (Managing Director Sui Southern Gas Company Limited, Karachi and another vs. Abdul Salam), this Court is of the view that findings of both the Courts below are contrary to the record and both the Courts below have wrongly exercised their jurisdiction, which was not vested to them.

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11. For the foregoing discussion, instant civil revision petition is **allowed** impugned judgments and decrees of Courts below are hereby **set aside**. Suit of the petitioner stands **decreed** as prayed for. Decree sheet be drawn.

(MOHSIN AKHTAR KAYANI)
JUDGE

R Anjam