

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P.No.3964 of 2016
Razi
Versus.

Oil & Gas Development Company Ltd. & others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	23.11.2016	Raja Faisal Younas, Advocate for the petitioner. Mr. Mushtaq Hussain Bhatti, Advocate for respondent No.1.

Through the instant writ petition, the petitioner, Razi, impugns the order dated 25.10.2016, passed by the learned Full Bench of the National Industrial Relations Commission, Islamabad (“NIRC”), whereby, respondent No.1’s appeal under Section 85(1) of the Industrial Relations Act, 2012 (“IRA”), against the order dated 17.12.2015, passed the learned Member, NIRC, was allowed. Vide the said order dated 17.12.2015, the learned Member NIRC had accepted the petitioner’s petition under Section 33 of the IRA seeking *inter-alia* a declaration to the effect that the petitioner’s correct year of birth was 1966, and not 1956.

2. Raja Faisal Younas, Advocate, learned counsel for the petitioner submitted that the order of the learned Member NIRC, and the learned Full Bench, NIRC were at variance; that the petitioner joined the service of respondent No.1 as Security Guard on 07.07.1994, and that his services were confirmed on 27.02.1995; that the petitioner’s year of birth as per his old National Identity Card, and the new Computerized National Identity Card was 1966; that the petitioner’s dividend slips, and pay slips bear the petitioner’s identity card

numbers; that when the petitioner, on one of his visits to the headquarters of respondent No.1, came to know that his date of birth had been wrongly recorded as 01.07.1956, he promptly filed a petition under Section 33 of the IRA before the NIRC seeking the correction of his date of birth entered in the records of respondent No.1; that the petitioner also submitted an application dated 09.02.2015, before respondent No.1 seeking the correction of his year of birth; that the wrong entry of the petitioner's date of birth at the time of joining service on 07.07.1994 was the result of a genuine clerical mistake; that the petitioner's petition was accepted by the learned Member NIRC, vide order dated 17.12.2015, which is strictly in accordance with the law; that respondent No.1's appeal against the said order dated 17.12.2015, was allowed by the learned Full Bench, NIRC; and that the appellate order is perverse and not in accordance with the law and facts of the case.

3. On the other hand, Mr. Mushtaq Hussain Bhatti, Advocate, learned counsel for respondent No.1/Oil and Gas Development Company Limited submitted that it is well-settled that a date of birth recorded at the time of induction into service would be final, and cannot be altered later; that the petitioner had not come up with any convincing reasons for seeking a change in the date of birth recorded by respondent No.1 at the time of the petitioner's entry into service; that as per respondent No.1's Office Memoranda dated 06.03.1999, 16.10.2001 and 29.03.2006, the date of birth of an employee of respondent No.1 declared at the time of entry into service is to

be treated as final, and the same cannot be amended at a subsequent stage; that at the time of the petitioner's initial appointment, he had declared his year of birth as 1956; that the petitioner has already retired from service on 30.06.2013 upon attaining the age of superannuation; that the petitioner is entitled to pensionary benefits; and that the Order dated 17.12.2015 passed by the learned Member, NIRC was contrary to the law laid down by the Superior Courts, whereas the Order dated 25.10.2016 passed by the learned Full Bench, NIRC was strictly in accordance with the law and facts of the case.

4. I have heard the learned counsel for the contesting parties and have perused the record with their able assistance.

5. It is not disputed that on 01.07.1994, the petitioner joined the service of respondent No.1 as a Security Guard. At the time of his induction in service, the petitioner had submitted his National Identity Card ("NIC") No.603-89-033024 issued on 31.12.1989, showing his year of birth as 1956. A copy of the said NIC has been annexed to respondent No.1's written comments. The learned counsel for the petitioner submitted that the entry of the year of birth in the said NIC was a clerical mistake. He further submitted that the NIC and Computerized NIC subsequently issued bear the petitioner's correct year of birth i.e. 1966.

6. As per respondent No.1's Office Memorandum dated 31.10.2016, the petitioner retired from service upon attaining the age of superannuation. The retirement benefits to which the petitioner is entitled are also set out in the said Office Memorandum.

7. According to respondent No.1's Circular No.AA0103-15, dated, 06.03.1989, a date of birth declared by an employee at the time of his entry into service is to be treated as final and no amendment can be allowed in it at any stage. This position was reiterated in respondent No.1's Circulars dated 16.10.2001 and 29.03.2006. However, it was clarified that alteration in the date of birth was not permissible *"unless it is so determined by the courts of law and it has reached finality."* These Circulars were referred to and given credence by the Hon'ble Supreme Court of Pakistan in its judgment dated 28.02.2014, passed in Civil Petition No.595-K/2013, titled, "Shahid Ahmed Vs. Oil & Gas Development Company Ltd." The Hon'ble Supreme Court had dismissed the petitioner's petition against the judgment of the Hon'ble High Court of Sindh dismissing the petitioner's writ petition seeking a change in his date of birth recorded at the time of his entry into the service of Oil & Gas Development Company Limited. In the said judgment, it has *inter alia* been held as follows:-

"11. ... the Petitioner in terms of Circulars No.AA0103-15 dated 6.3.1989, 16.10.2001 and 29.3.2006 was required to declare his correct date of birth at the time of joining the service of OGDCL. Under the said circulars, it was provided that the date of birth declared at the time of entry into service shall be treated as final and no amendment will be allowed in it at any stage. The Petitioner, on the basis of subsequent documents, which were obtained by him on the basis of affidavit after more than 20 years of his service with the Respondent, could not seek correction of his date of birth to nullify the earlier documents submitted by him, which mentioned his date of birth as 6.6.1953. The learned High Court, in peculiar facts and circumstances of the case was justified in holding that the Writ Petition of the Petitioner was barred by laches.

12. ... In any event, the circulars referred to above, clearly show that the date of birth

declared by an employee of the Company at the time of joining the service would be final and no amendment can be made in it at a subsequent stage. Therefore, even if the Respondent has wrongly corrected and or amended the date of birth, of any employee, it would not confer any right upon the Petitioner to get his date of birth corrected on the ground of discrimination as such act of amending/altering the dates of birth of any employee by the Respondent, on the face of it was contrary to the language of the Circulars/Office Memorandums.”

8. The NIC, bearing No.603-89-033024, submitted by the petitioner when he joined respondent No.1's service in 1994 was issued to the petitioner on 31.12.1989. This NIC showed the petitioner's year of birth as 1956. Another NIC, bearing No.603-66-086235, showing the petitioner's year of birth as 1966, was issued to the petitioner on 04.05.1995. The Computerized NIC, showing the petitioner's year of birth as 1966 was issued to the petitioner on 21.09.2016. The petitioner's security pass issued by respondent No.1 mentions the petitioner Computerized NIC. According to the birth certificate dated 15.12.2014, issued by the "Government of Balochistan Pakistan" shows that the petitioner was born on 01.07.1966. The petitioner neither mentioned this birth certificate in its petition under Section 33 of the IRA before the NIRC, nor in the writ petition. Hence, no reliance can be placed on this document in these proceedings.

9. The NIC which shows the petitioner year of birth as 1966 were issued after the petitioner joined the service of respondent No.1 i.e. 01.07.1994. Therefore, credence has to be given to the NIC which the petitioner had submitted when he joined respondent No.1's

service. The writ petition as well as the petitioner's petition before the NIRC are silent as to the date when the petitioner came to know that his date of birth had been wrongly entered in the records of respondent No.1. However, it is pleaded that immediately after coming to know about the said wrong entry, he approached the respondent No.1 seeking the correction of his date of birth. There is no document on the record to substantiate this plea. The date on the petitioner's petition before the NIRC is 02.03.2015. The petitioner's assertion that he came to know about the wrong entry of his year of birth in respondent No.1's records in 2015, is belied by the fact that the petitioner's date of birth (01.07.1956) is mentioned in his appointment letter dated 30.10.1995, which shows that the petitioner had joined his duties as a Security Guard with effect from 01.07.1994 in Pay Scale 02. This appointment letter was addressed/copied to the petitioner. The petitioner has not brought any other appointment letter on record to disprove this. Hence, the petitioner's attempt to change his year of birth in the records of respondent No.1 after more than 20 years of the issuance of the appointment letter operates as an estoppel against the petitioner, and disentitles him from discretionary relief in the equitable jurisdiction of this Court under Article 199 of the Constitution.

10. Before I record my conclusion, a reference to the following case law on the subject would be apposite:-

- (i) In the case of Jamal Khan Jaffar Vs. Government of Balochistan (1998 SCMR 1302), it was held that the service book of

a government servant was the most authentic record with regard to the entries of his date of birth. The Hon'ble' Supreme Court held that it would be proper that if these documents were re-examined in order to ascertain the appellant's correct date of birth, disclosed at the time he entered into government service.

- (ii) In the case of Iqbal Haider Vs. Federation of Pakistan (1998 SCMR 1494), the correction in respondent's date of birth by his University was challenged more than forty six years after such correction was made. Although, the petition was dismissed by the Hon'ble Supreme Court, it was, however, held that authenticity of a date of birth recorded in the documents cannot be changed belatedly, and that the rule that a government employee cannot make an application for a change in his date of birth after two years of his joining the service, should also be applied to the judiciary.
- (iii) In the case of Niaz Akbar Vs. Atomic Energy Commission (2002 PLC (C.S.) 970), the petitioner who was an employee in the Pakistan Atomic Energy Commission sought to change his date of birth from 13.06.1964 to 11.03.1967. The petitioner had been able to get a decree in his favour from a civil court regarding the change in his date of birth. The Commission at first changed the petitioner's date of birth, but on reconsideration of the matter, withdrew the change. The petitioner's

departmental appeal as well as his appeal before the Service Tribunal was dismissed. It was held by the Hon'ble Supreme Court that sanctity would be given to the petitioner's date of birth entered at the time of his entry into service. Furthermore, it was held that the petitioner's date of birth entered at the time of his entry into service could not be changed on the basis of decree of a civil court passed in proceedings in which the Commission was not a party.

- (iv) In the case of Khalil Ahmad Siddiqui Vs. Pakistan, through Secretary Interior (2003 PLC (C.S.) 696), it was held as follows:-

"It, is a matter of fact, has become a common phenomenon and usual practice that the Government Servants if and when they come at the verge of their retirement, they question their dates of birth just to prolong their tenure and enjoy the perks and privileges of their service for a few more years at the cost of others. This idea never creeps across their mind earlier and in case it does, it is never taken seriously and pursued to the desired end. It is clearly and squarely a case of estoppel of conduct which will certainly bar and barricade the petitioner from seeking the correction asked for at least at such a belated stage".

- (v) In the case of Muhammad Tariq Vs. University of Peshawar (2004 PLC (C.S.) 1162), the Hon'ble Supreme Court held that the plea of a civil servant with regard to a wrong entry of date of birth, when raised after remaining in service for a long period, would not carry any weight. Furthermore, it was held that civil servant could not make an application for a

change in his date of birth after two years of joining service. Authenticity of a date of birth recorded in documents, when the civil servant joined service, could not be changed belatedly.

- (vi) In the case of Qamar-ud-Din Vs. Pakistan through Secretary Establishment Division (2007 SCMR 66) the Hon'ble' Supreme Court dismissed the petitioner's petition against the judgment of Federal Service Tribunal turning down his appeal seeking the correction of his date of birth from 01.04.1946 to 01.04.1948. In the said judgment, the Hon'ble Supreme Court observed as follows:-

"We may observe that lately a tendency has developed whereby unwarranted claims, attempting to show error in "date of birth" are asserted towards retiring age by fabricating or manipulating documents in that behalf. Obviously such practice must be discouraged and effectively curbed".

- (vii) In the case of Ahmed Khan Dehpal Vs. Government of Balochistan (2013 SCMR 759), the petitioner, who was serving as Chief Engineer in Irrigation Department, Government of Balochistan, had obtained a declaratory decree from a civil court to the effect that his actual date of birth is 02.02.1958 instead of 02.02.1953, as recorded in his secondary school certificate as well as in his service book. His plea for the correction of his date of birth before the Secretary, Irrigation Department as well as the Service Tribunal, was turned down. The Hon'ble' Supreme Court dismissed the petitioner's petition with the following observations:-

“The idea to have the date of birth altered appears to be an off shoot of an afterthought. It, as a matter of fact, has become a common practice with civil servants to file suits for the correction of their dates of birth with they come to the verge of their retirement just to prolong the tenure for enjoying the perks and privileges for a few more years at the costs of the others.”

11. The petitioner superannuated on 30.06.2016. The steps taken by him to have his year of birth entered in the records of respondent No.1 changed about a year prior to his retirement makes the petitioner's case bereft of *bonafides*. Stale and belated applications for alteration of date of birth cannot be entertained. Change of date of birth is a very important responsibility to be discharged since there is a general tendency amongst the employees to lower their age and change their date of birth to suit their career and to lengthen their service career.

12. In view of the above, I find no reason to interfere with the appellate order dated 25.10.2016, passed by the learned Full Bench of the NIRC. Resultantly, this petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

APPROVED FOR REPORTING

Sanauallah*

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