

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

R.F.A No.82/2020.

Muhammad Inaam **Vs.** **Islamabad electric Supply Company Limited and others.**

Appellant by: **Mr. Sajid Mehmood Chaudhry, Advocate.**

Respondents by: **Ex-Parte.**

Date of Decision: **22.07.2020.**

MOHSIN AKHTAR KAYANI, J:- Through this Regular First Appeal, the appellant has assailed the judgment & decree dated 28.01.2020, whereby learned Civil Judge 1st Class (West) Islamabad dismissed the suit filed by the appellant.

2. Brief facts are that the appellant filed suit for declaration and mandatory injunction with the prayer that his father's name has been recorded as Muhammad Saddique in service record of the respondents department instead of Muhammad Rafique, which was wrongly mentioned at the time of induction of the appellant in the year 1978. The appellant produced his two ID cards (old and new) containing different father's name, whereas Muhammad Rafique is stated to be his real uncle, who is also employee of respondents department. The appellant himself appeared as P.W.1 and recorded his detailed version and produced the record. Trial Court after recording of evidence dismissed claim of the appellant.

3. Learned counsel for the appellant contends that the appellant has given his detailed evidence and even produced photocopies of his previous ID card and new ID card as well as service record, which requires rectification as such he got issued new CNIC from NADRA where his father's name is changed as Muhammad Saddique; that NADRA authorities after due verification have rectified the mistake in record and issued new ID card and even the respondents department IESCO has also issued different training certificates where name of appellant's father was referred as Muhammad Saddique, even in different office orders issued by the

respondents department reflect the point of view of the appellant but all these facts have not been considered by Trial Court; that Trial Court has dismissed the suit without calling any evidence of the public record, which is available and dismissed the suit on technicalities as it was alleged that the suit was filed after 26 years of joining service although it does not bar the rectification of incorrect data.

4. After admission of the appeal, notices were issued to the respondents, which were accepted by the respondents but no one put appearance on behalf of the respondents despite service, therefore, the respondents were proceeded against ex-parte on 22.06.2020.

5. I have heard learned counsel for the appellant and perused the record.

6. Perusal of the record reveals that the appellant is employee of respondents department and served the department for forty (40) years being lineman and got retired one year ago but his pension has not yet been released due to incorrect parentage referred in the record. The appellant contacted the respondents department to get the same rectified from the Court of law. The appellant initially approached office of NADRA and rectified his CNIC, whereby correct name of his father has been referred as Muhammad Saddique. The appellant has prayed for declaratory decree for rectification of the record of the respondents department after incorporating name of his father as Muhammad Saddique instead of Muhammad Rafique. The appellant was inducted in respondents department on 14.01.1979 and he was recruited through his uncle and as such his uncle name has been written in place of his father. His uncle died in the year 1990 and his father died in the year 1986.

7. The matter was contested in the Trial Court and the respondents department produced the witness Muhammad Javed Malik as D.W.1, who contended that at the time of induction of the appellant, his father's name was recorded as Muhammad Rafique on the basis of ID card, which was issued in the year 1979 and the second ID card was issued in the year 2005, which is containing his father's name as Muhammad Saddique, however, the said change was not recorded in the respondents department. D.W.1 has also acknowledged that they have received the application for incorporation of correct name of father of the appellant after

rectification made by NADRA authorities in CNIC. He has also acknowledged that Exh.P.1 dated 16.10.2019 was issued by the respondents department, in which parentage of the appellant was referred as Muhammad Saddique, even another letter dated 01.10.2018 contains correct parentage of the appellant as such all these factors recorded in the evidence as well as noticed in impugned judgment of Trial Court clarify the entire situation but suit of the appellant was dismissed in terms of Article 120 of the Limitation Act that the limitation period was counted from 14.01.1999 as such question of limitation has not been considered hurdle in the way of rectification of personal right as it contains the rectification of name of father in the relevant record including the NADRA. The NADRA authorities in terms of NADRA Ordinance 2000 are competent to record and declare name, father name, date of birth and other information and even they have sole authority to rectify such kind of mistake of other document upon their information.

8. The Trial Court has not considered the cause of action of the suit, whereby the appellant has filed the suit when the respondents department directed him to get the decree from the Civil Court qua the rectification on record as such it has nothing to do with his date of appointment or article 120 of the Limitation Act, which was wrongly made basis for dismissal of appellant's claim.

9. Trial Court has not considered all these aspects rather dismissed the suit only on the ground of limitation, whereas it is settled law that legal rights cannot be curtailed by way of limitation especially when the appellant has been deprived of his pension due to delay in rectification of NADRA record as well as non-issuance of declaratory decree. It is trite law that ID card will be treated more authentic as presumption of truth is attached to it, which could be considered evidence and would hold the field, unless same was rebutted by good and better evidence. Reliance is placed upon **PLD 2005 SC 962 (Abdul Khaliq and another Vs. Maulvi Muhammad Noor and others)** as such the respondents have not rebutted claim of the appellant rather acknowledged the same, but Trial Court has ignored all factual aspects and passed the impugned judgment only on the ground referred in para 20, whereby period of limitation was highlighted. It is sacred duty of Trial Court to call record of NADRA for the purpose of verification or any other evidence from the

respondents department to rebut his claim, but no such effort has been made although preliminary onus has been discharged by the appellant as reflected from the record.

10. In view of above discussion, the instant appeal is allowed. Impugned judgment & decree 28.01.2020 is hereby set aside. The matter is remanded to learned Trial Court to call evidence of NADRA authorities qua the parentage of the appellant, even the appellant is also at liberty to produce additional evidence if required for confirmation of his parentage from public record. It is expected from learned Trial Court that it will conclude the trial within period of three (03) months from passing of this judgment under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

R Anjam