

ORDER SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 4117 of 2021

Hukam Dad

VERSUS

**IESCO through its Chief
Executive and 4 others.**

| Serial No. of order of proceedings | Date of order of proceedings | Order with signatures of judge, and that of parties of counsel, where necessary. |
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| 1 | 2 | 3 |

20.12.2021

Malik Waqar Mahmood Awan, Advocate.

Through the instant writ petition, petitioner has challenged the orders dated 23.08.2021 and 21.10.2021 passed by the learned Member Bench-II and learned Full Bench NIRC/respondents 4 & 5 respectively, whereby his grievance petition under Section 33 of the Industrial Relations Act, 2012 for correction of date of birth in service record, was dismissed while appeal bearing No.12-A(138)/2021 also met the same fate.

2. Learned counsel for the petitioner contends that the impugned orders are against the law, facts and have been passed in hasty manners without recording evidence; that age of the petitioner was wrongly recorded as 01.8.1961 in his Service Book whereas his actual date of birth is 25.12.1964. To support his contentions, learned counsel has relied upon decree of the learned Civil Court dated 28.11.2017 passed in suit for declaration and mandatory injunction filed by the petitioner, titled Hukam Dad v. National Database Registration Authority (NADRA). Further contends that the learned Full Bench of NIRC has also not considered the School Leaving Certificate. Lastly, learned counsel prayed that case may be remanded for decision on merits

after framing of issues and recording evidence of the parties.

3. Arguments heard. Record perused.

4. The emphasis is upon non-consideration of the decree dated 28.11.2017 passed by the learned Civil Judge 1st Class, (West) Islamabad in suit titled Hukam Dad v. National Database Registration Authority (NADRA), whereby petitioner sought declaration and mandatory injunction for correction of his date of birth. It is significant to note that the petitioner has not arrayed the respondent-Department (IESCO) as party in the said suit, therefore, its implication or binding effect could not be pressed into service against the respondent-department being out of the array of the defendants of that suit. In addition, the jurisdiction which the petitioner intends to invoke, is an extra ordinary jurisdiction, aimed to be invoked in exceptional cases and cannot be equated with regular remedy like execution petition.

5. The petitioner intends to get alteration of his date of birth in service record after more than two decades. It is settled law that the date of birth once recorded in the service record of a civil servant cannot be altered or changed except in accordance with exceptions provided in the rules itself. Guidance is solicited by the dictum laid down by the Hon'ble Supreme Court of Pakistan in case of Chief Secretary, Government of Balochistan, Quetta and others v. Asmatullah Kakar (2020 SCMR 1678).

6. Adverting to the second objection that both the learned lower foras omitted to consider School Leaving Certificate of the petitioner, it is observed that the document being pressed into service bears the date of issuance as "15.10.2009" while as per its contents, the petitioner left the school in June 1975. This

aspect, on the face of it, suggests that the document was issued after more than three decades, therefore, veracity of the same, without putting it to judicial scrutiny cannot be accepted.

7. It also gleans out of record that the petitioner in his application for leave encashment, submitted at the time of retirement, mentioned his date of birth as 01.08.1961 instead of 25.12.1964. If the contention, as argued, is admitted as correct the situation emerges that petitioner had been of 16/17 years of age at the time of entering into service in 1980 which is even beyond imagination.

8. Another important aspect of the matter is that the petitioner joined the service in 1980 while filed grievance petition in January 2021 i.e. after more than 30 years. The Hon'ble Apex Court in recent pronouncement in C.P. No.4428 of 2019 titled Muhammad Khaliq Mandokhail v. Government of Balochistan on aspect of delay on the subject has graciously observed as under:-

As we have noticed that the whole proceedings were carried out after the lapse of 22 years of active service, therefore, it can be safely held that the proceedings carried out by the petitioner were based upon an afterthought just to prolong the service tenure and it was nothing but an attempt to continue with the service on the basis of frivolous and tainted documents which speak volume in relation to its genuineness."

9. According to petitioner's own stance, before joining the respondent-department (IESCO), he was an employee of Wapda. The rules on the subject applicable to the latter i.e. The Pakistan Wapda Employees (Date of Birth) Rules, 1994, provides that once date of birth declared and recorded at the time of entry in service, same cannot be altered. Relevant Rule 5 (b) (i) reads as under:-

“Date of birth once declared and recorded at the time of entry in Wapda service cannot be altered except in case of a clerical error, with approval of the Authority in respect of employees in grade 17 and above to be routed through MD (Admn.) Wapda. The cases of employees upto grade 16 will be approved by respective Members with cases to be routed through a Scrutiny Committee to be set up under each Member. These Committees will include a representative from HR&A.”

10. Moreover, the petitioner had been employee of respondent/IESCO which is a non-statutory corporation and the relationship between the respondent and its employee is that of master and servant. Therefore, constitutional petition is not maintainable in view of dictum laid down by the Hon’ble Apex court in case title “Pakistan International Airlines Corporation and others v. Tanvir ur Rehman and others, (PLD 2010 (Supreme Court) 676)”. In the similar circumstances, this Court in the case of Manzoor Ahmad v. Federation of Pakistan, (2018 PLC (CS) 1224), has also graciously observed that:-

“it is well settled that a writ petition is maintainable where the respondent authority violated any provision of law or statutory rules employees who are governed by statutory rules can avail the remedy of filing of writ petition before the High Court. It is also well settled that the principle of master and servant was applicable to the employees whose services were not governed by any statutory rules. Employee of a company, owned by the Government, in the absence of violation of law or any statutory rules could not press into service the constitutional jurisdiction of a High court in order to seek relief with respect to his employment.”

11. In view of above, instant writ petition has no force, therefore, same is **dismissed in limine.**

**(ARBAB MUHAMMAD TAHIR)
JUDGE**

A.R.ANSARI*

Approved for reporting.

