

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

Writ Petition No.3651 of 2019

Inspector Mohammad Abbas

Versus

Inspector General of Police, Islamabad and 2 others

Date of Decision : 13.02.2020

Petitioner by : Haroon ur Rasheed, Advocate

**Respondents by : Mohammad Rauf, Inspector (legal)
Mr. Tahir Hameed Khan, State Counsel.**

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant writ petition, petitioner has challenged the Notification of retirement dated 15.10.2019, whereby he has been retired from service after attaining the age of superannuation.

2. Learned counsel for the petitioner contends that date of birth of the petitioner has been wrongly inferred in the impugned Notification as 08.10.1959 while his actual date of birth is 08.10.1961. In this respect, he has drawn the attention of the Court to the record of the official respondents wherein an inquiry was conducted by the respondents regarding alleged involvement of the petitioner in the date of birth, wherein he was exonerated on the basis that he was not involved in the said matter; that date of birth in the school record of the petitioner is also 08.10.1961; and that Department itself corrected the date of birth as 08.10.1961 so in the light of above he was required to be retired on the basis of his date of birth as 08.10.1961 instead of 08.10.1959.

3. Learned counsel for respondents states that as per rules of the respondents, respondent No.1-Inspector

General is the only competent authority to change/rectify the date of birth and not the respondents No.3 and record which has been annexed is not approved/passed by respondent No.1 rather passed by respondent No.3, which is not covered under the rules. In this respect, he has referred Rule 97 of the Police Rules, 1934. Further states that matter is with regard to terms and conditions of service of petitioner and being civil servant he has to approach the learned Federal Service Tribunal or may file a suit for declaration for correction of his date of birth; as for matter of service tribunal, it is responded that the petitioner being retired employee is not a civil servant.

4. Heard the learned counsel for the parties and examined the record with their able assistance.

5. The petitioner has impugned the order of retirement and is seeking correction of his date of birth as per his school record and official documents of the respondent-department. First objection before the Court has been raised regarding jurisdiction of this Court on the basis that petitioner is a civil servant and he should approach the Service Tribunal for redressal of his grievance. To settle the said question of law that whether a retired employee for the purpose of his terms and conditions of service is considered as civil servant or otherwise, it is essential to examine relevant statutory as well as constitutional provisions/Articles. The definition of civil servant as provided in the Civil Servant Act, 1973 in Clause 2(1)(b) reads as under:-

(b) "civil servant" means a person who is a member of an All-Pakistan Service or of a civil service of the

Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, but does not include-

- (i) a person who is on deputation to the Federation from any Province or other authority;*
- (ii) a person who is employed on contract, or on work-charged basis, or who is paid from contingencies; or*
- (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (XXV of 1934), or the Workmen's Compensation Act, 1923 (VIII of 1923)."*

6. The term civil servant has been defined in Section 2(a) of the Service Tribunals Act, 1973 in following terms:-

"civil servant" means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973.

7. The legislature had created the Tribunals for the purpose of adjudication of matters relating to the terms and conditions of service of civil servants. The jurisdiction of all the courts including of this Court has been barred by the Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter described as the Constitution*). Article 212 of the Constitution is reproduced hereunder:-

"212. Administrative Courts and Tribunals.-(1) Notwithstanding anything hereinbefore contained, the appropriate Legislature may by Act ¹[provide for the establishment of] one or more Administrative Courts or

Tribunals to exercise exclusive jurisdiction in respect of—

- (a) matters relating to the terms and conditions of persons ²[who are or have been] in the service of Pakistan, including disciplinary matters;*
- (b) matters relating to claims arising from tortious acts of Government, or any person in the service of Pakistan, or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or*
- (c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.*

(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends ¹[and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal ²], other than an appeal pending before the Supreme Court,] shall abate on such establishment]:

Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, ³[Majlis-e-Shoora (Parliament)]

by law extends the provisions to such a Court or Tribunal.

(3) An appeal to the Supreme Court from a judgment, decree, order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal."

8. The definition of 'civil servant' provided in Clause 2(a) of the Service Tribunals Act, 1973 correlates with Article 212(1)(a) of the Constitution, which is the supreme law. The Constitution is fundamental to a law, created under its authority and when we comprehend the intent of legislature by considering the plain meanings of Article 212 of the Constitution it provides words persons who are or have been in the service of Pakistan. Rule of interpretation provides that in case of obscurity, the statute should be read in the light of the constitutional scheme. [State of H.P. v. Surinder Sing Banolta {2006} 12 SCC 418]. There remains no ambiguity that definition of civil servant as provided in Clause 2(1)(b) of the Act of 1973, when considered in juxtaposition of Article 212 of the Constitution and Services Tribunal Act, 1973, then same includes the person who remained as civil servant for enforcement of his terms and conditions of service, which obviously includes a retired employee, therefore, are declared to be the subject of definition under Clause 2(1)(b) of the Civil Servants Act, 1973. They are not ousted from agitating their claims regarding terms and conditions of their service before the Service Tribunals. In the light of said explanation/construction, there is no

force in the argument that retired civil servant is not the subject of Service Tribunal for redressal of his grievance for the purpose of terms and conditions of his service.

9. The petitioner is a civil servant and is barred to agitate his claim before this Court. This bar has been created through Article 212 of the Constitution. In this respect I am fortified with the case law reported as 2015 SCMR 456 titled Ali Azhar Khan Baloch and others. Vs. Province of Sindh and others(Paragraph 238) wherein it is held that :-

“Article 212 of the Constitution places fetters on the jurisdiction of a Civil Court and a High Court to entertain matters relating to terms and conditions of service of a Civil Servant. We have already dealt with the scope of Article 212 of the Constitution separately. The mode of correction in the date of birth of a Civil Servant is provided under Rule 12A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, which is part of terms and conditions of service of a Civil Servant and cannot be resorted to through the Civil Suit. It has also been well established by now that a Civil Servant cannot seek alteration in his date of birth at the verge of his retirement or otherwise in a suit and in this respect principles laid down in the case of Dr. Muhammad Aslam Baloach v. Government of Balochistan (2014 SCMR 1723) are fully attracted.”

10. It has been held by the superior Courts in the above referred case law that Article 212 of the Constitution bars the jurisdiction of all Courts including of this Court to entertain and adjudicate upon any matter in which terms and conditions of service of an employee are involved. Only jurisdiction is of the relevant Service Tribunal, created/established under Article 212 of the Constitution. Matter of date of birth is related to the terms and conditions of service as contained in Rule 12A of the Civil Servants (Appointment, Promotion and Transfer) Rules,

1973. Be that as it may, the case of the petitioner may be on sound footings but as this Court lacks jurisdiction due to bar contained in Article 212 of the Constitution, could not adjudicate upon the matter.

11. In the light of above, the instant writ petition is not maintainable hence, dismissed. However, petitioner is at liberty to seek remedy available to him under the law, if so, advised.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail

(Approved for Reporting)