

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

CIVIL APPEAL NO.507 OF 2020.

*(Against the judgment dated 30.08.2019
passed by the Balochistan Service Tribunal,
Quetta in Service Appeal No.611 of 2018).*

Chief Secretary, Government of Balochistan,
Quetta and others. *...Appellant(s)*

Versus

Asmatullah Kakar. *...Respondent(s)*

For the Appellant(s): Mr. Arbab Muhammad Tahir,
A. G. Balochistan.
(via video link from Quetta)
Mr. Ayaz Khan Swati, Addl. A. G.
Balochistan *(from Islamabad)*

For the Respondent(s): Mr. M. Akram Shah, ASC.
(via video link from Quetta)
(appeared without filing of enter appearance)

Date of Hearing: 18.08.2020.

JUDGMENT

IJAZ UL AHSAN, J.- The Appellants challenged the judgment of the Balochistan Service Tribunal, Quetta dated 30.08.2019. Through the impugned judgment, a notification dated 18.10.2018 and letter dated 12.12.2018 issued by the Secretary S&GAD, Government of Balochistan to the extent of retirement of the Respondent was set aside with the result that date of birth of the Respondent was accepted as 25.12.1961 instead of 08.01.1959. The later date was recorded in the relevant service records of Respondent.

2. Briefly stated the facts of the case are that the Respondent claimed that he was born on 25.12.1961 in Kuchlak District, Quetta. However, at the time of joining service, his date of birth was mentioned as 08.01.1959. He claimed that his date of birth was not correctly mentioned in his service record. Therefore, in order to insert his correct date of birth in his service and other relevant records he filed an application with department. On the refusal of the department to do so, he filed a suit of declaration and permanent injunction before the Civil Court. In the said suit, he impleaded Chairman, Board of Intermediate and Secondary Education, Balochistan and the Headmaster of Government High School, Kuchlak. The suit was decreed because neither party seriously contested it and the evidence produced by the Respondent remained un-rebutted. Through the said judgment and decree it was declared that the correct date of birth of Respondent No.1 was 25.12.1961. The Court directed the Chairman Board of Intermediate and Secondary Education, Balochistan and the Headmaster, Government High School, Kuchlak to correct the record by entering the date of birth of the Respondent as 25.12.1961 instead of 08.01.1959. It appears that on the basis of the said decree, the Respondent got his secondary school certificate changed to reflect his corrected date of birth. He also got the school record amended on the basis of the judgment and decree dated 07.09.1989. Interestingly enough, he appears to have moved an application with the Secretary, Services and

General Administration Department, Government of Balochistan seeking correction of his date of birth. Vide order dated 07.04.1991, the application was rejected by the competent authority on the ground that the relevant rules did not allow alteration in the date of birth once recorded on the basis of matriculation certificate. The Respondent did not agitate the matter any further till notification dated 18.10.2018 was issued by the Secretary, Services and General Administration Department, Quetta on the basis of which the Respondent was retired having attained the age of superannuation with effect from 07.01.2019. The date of superannuation was calculated on the basis of date of birth being 08.01.1959 as was originally recorded in his service record.

3. The Respondent made a fresh representation before the Secretary, Services and General Administration Department for correction of his date of birth and hence extension of his services for a period more than two years. This request was again declined. The Respondent No.1 therefore approached the Balochistan Service Tribunal with a service appeal. This appeal was allowed by the Tribunal through the impugned judgment.

4. Leave to appeal was granted by this Court on 08.05.2020 in the following terms:

“The learned Advocate General, Balochistan contends that the Respondent was employed in 1984. In the

year 1991, he had applied for change of his date of birth, which was rejected vide order dated 07.04.1991 that was accepted by the Respondent, as he did not challenge the same further rather in the year 2018 when he was at the verge of retirement he filed a service appeal before the Balochistan Service Tribunal. This appeal was hopelessly time barred and was not maintainable. He submits that once the date of birth is recorded in service record at the time of joining Government service, the same could not be changed as per settled law more particularly, in terms of Section 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009.

2. The learned Law Officer has further contended that the Respondent had filed a suit in the year 1989 for correction of his date of birth in which he managed to obtain an ex-parte decree dated 07.08.1989. He contends that as the petitioners-Respondent department were not party in the said suit, therefore, the judgment passed therein has no binding effect on the petitioners. He adds that even otherwise the said judgment obtained by the petitioner was altogether illegal, as such the same has not been approved by the superior Courts. In support of his contentions the learned Law Officer has relied upon judgments of this Court reported as Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) and Muhammad Aslam Baloch v. Government of Balochistan (2014 SCMR 1723).

3. The submissions made by the learned Advocate General Balochistan need consideration. Leave to appeal is therefore granted to consider inter alia the same. Appeal stage paper books be prepared on the available record. However, the parties are at liberty to file additional documents, if any within a period of one month. As the matter relates to service, the Office is directed to fix the same for hearing in Court expeditiously, preferably after three months.

4. In the meantime, operation of the impugned judgment dated 30.08.2019 shall remain suspended.”

5. The learned Advocate General, Balochistan has argued that the Balochistan Service Tribunal failed to take into consideration the fact that the actual date of birth of Respondent No.1 was 08.01.1959 which was mentioned by him in his forms filed before the Balochistan Public Service Commission. The form is in his own handwriting. Further, the date of birth mentioned in the form was also mentioned in the matriculation certificate which was made part of the service record of the Respondent. He submits that the Balochistan Service Tribunal failed to notice that the question of change of date of birth had been agitated even earlier in 1981 when the Respondent filed an application for correction of his date of birth after obtaining a decree of the Court. However, such application was rejected. The Respondent did not agitate the matter any further and remained silent till 2018 when the notification for his retirement was issued. On issuance of the notification, he filed a fresh application, the same was rejected and he used such rejection as a cause of action to file a service appeal which was patently barred by time and without cause of action. He further maintains that his silence of over 20 years operates as an estoppel and the Respondent was barred from approaching the Balochistan Service Tribunal.

6. The learned Advocate General, Balochistan further submits that the Balochistan Service Tribunal failed to notice or consider the impact of Rule 3(6) of the Balochistan Government Initial Appointment to the Civil Service post (age

and relaxation of upper age limit) Rules, 2012 which provides that the date of birth of a civil servant once recorded at the time of joining Government service shall be final and no alteration therein shall be permissible except where a clerical mistake occurs in recording the date of birth in the service record. The learned Advocate General further maintains that the Balochistan Service Tribunal has failed to take into consideration the dictum of this Court in respect of change of date of birth under the provision of Rule 12-A of the Civil Servants (Appointments, Promotions and Transfers) Rules, 1973 as well as the ratio of the law laid down in various judgments of this Court including Qamaruddin. v. Pakistan through Secretary, Establishment Division, Islamabad and another **(2007 SCMR 66)**, Dr. Muhammad Aslam Baloch v. Government of Balochistan through Secretary, Health Department and others **(2014 SCMR 1723)**, Ali Azhar Khan Baloch and others v. Province of Sindh and others **(2015 SCMR 456)** and Dr. Zulfiqat Ahmed Malik v. Federation of Pakistan through Secretary Revenue Division, Chairman FBR, Islamabad and others **(2019 SCMR 1973)**.

7. The learned counsel for the Respondent, on the other hand, has defended the impugned judgment. He has vehemently argued that the date of birth of the Respondent was wrongly recorded in the forms of the Public Service Commission as well as his matriculation certificate. He had accordingly approached a Court of competent jurisdiction and got his correct date of birth declared through a declaratory

decree. Such decree has remained unchallenged and the Government of Balochistan had no option except to implement the judgment and decree which had attained finality. He further maintains that in a number of subsequent ACRs which also constitute a part of his service record, his correct date of birth i.e. 25.12.1961 has been recorded. He therefore maintains that the Government of Balochistan has acquiesced in the matter, the judgment and decree have attained finality and the Balochistan Service Tribunal was within its powers and legally justified in implementing the judgment of the Additional District Judge-II, Quetta dated 07.09.1989.

8. We have heard the learned counsel for the parties and carefully examined the record.

9. It is clear and obvious to us that before joining service the Respondent filed an application form in order to sit for the civil service examination. In the said form which the Respondent filled in his own hand and was duly signed by him, he mentioned his date of birth as 08.01.1959. The form was accompanied by his Secondary school certificate which also reflected the same date of birth. Likewise, the same date of birth was entered in his service record from the day he joined service and was not changed within the timeframe provided by law. It is by now well settled that date of birth of a civil servant once recorded in his service book and other service record at the time of his entry into the Government

service cannot be changed, except where an error occurred in recording the correct date of birth on account of a clerical error.

10. Further, all relevant service rules including the Rule 3(6) of the Balochistan Government Initial Appointment to the Civil Service post (age and relaxation of upper age limit) Rules, 2012 as well as the Civil Servants (Appointments, Promotions and Transfers) Rules, 1973 are clear and categorical in this respect and deviation from the same is neither permissible nor desirable. We find that the Balochistan Service Tribunal altogether ignored the rules for reasons best known to it.

11. We also note that the Respondent filed a declaratory suit in 1988 and obtained a judgment and decree dated 07.09.1989. It is however significant to note that he only impleaded Chairman, Board of Intermediate and Secondary Education, Balochistan Quetta and the Headmaster, Government High School, Kuchlak in his suit. He did not implead his employer namely, the Government of Balochistan which was the most material and necessary party in the suit in question. Further, armed with the said judgment and decree, he filed an application for alteration in his date of birth which was rightly declined vide letter dated 07.04.1991 issued by the Government of Balochistan, Services and General Administration Department. He did not agitate this matter any further which became past and closed

transaction. Thereafter, the Respondent kept quiet for the next 17 years. It was only on the eve of his retirement when the notification for his retirement was issued, that he moved an application agitating the matter again knowing that the request had already been declined in 1991, and thereafter filed the service appeal. This in our opinion was a malafide and seemingly clever attempt to hoodwink the system and extend his date of retirement by a few years.

12. The argument of the learned counsel for the Respondent that Government of Balochistan did not challenge the judgment and decree which had attained finality and it was bound to implement it is misconceived and without substance. In the first place, even the maintainability of the suit was questionable on account of clear and elaborate rules available in the Service Rules. Further, the Government of Balochistan which was a necessary party was not impleaded and the judgment in question was neither binding nor executable against the Government of Balochistan. We also find that the service appeal filed by the Respondent was patently barred by time and the said fact unfortunately escaped the notice of the Balochistan Service Tribunal. We also find it surprising that the Balochistan Service Tribunal not only ignored and failed to take notice of clear and unambiguous service rules including the Rule 3(6) of the Balochistan Government Initial Appointment to the Civil Service post (age and relaxation of upper age limit) Rules, 2012 but also the provisions of the Balochistan Civil Servants

(Appointments, Promotions and Transfers) Rules, 1973. Most significantly the Tribunal totally failed to consider, appreciate and follow the dicta of this Court recorded in Qamaruddin. v. Pakistan through Secretary, Establishment Division, Islamabad and another, Dr. Muhammad Aslam Baloch v. Government of Balochistan through Secretary, Health Department and others, Ali Azhar Khan Baloch and others v. Province of Sindh and others and Dr. Zulfiqat Ahmed Malik v. Federation of Pakistan through Secretary Revenue Division, Chairman FBR, Islamabad and others (**supra**) where it has repeatedly been held that the date of birth once recorded in the service record of a civil servant cannot be altered or changed except in accordance with the exceptions provided in the rules itself. It was never the case of the Respondent that his case fell within any of the exceptions or that his date of birth was wrongly recorded on account of a clerical error.

13. The Balochistan Service Tribunal also failed to take notice into consideration that in the year 1991 the competent authority had already rejected the representation of the Respondent and the Respondent had remained silent for 18 years before agitating the matter before the Balochistan Service Tribunal. The Balochistan Service Tribunal did not consider it necessary to record any reasons for entertaining the service appeal, condoning the delay, ignoring the clear, unambiguous and unequivocal language of the rules and consistent dicta on the question of law settled by this Court in the various judgments cited above. It may be noted that in

terms of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973, any decision of this Court to the extent that it decides a question of law or is based upon or enunciates a principle of law is binding on all other Courts in Pakistan. On this yardstick, the judgment of the Tribunal is *per incuriam*.

14. For reasons recorded above, we allow this appeal. We find the judgment of the Balochistan Service Tribunal, Quetta dated 30.08.2019 to be unsustainable. It is accordingly set aside.

15. The Registrar shall communicate a copy of this judgment to the Balochistan Service Tribunal, Quetta.

Chief Justice

Judge

Judge

ISLAMABAD.

18.08.2020.

Zubair/*

‘Not Approved For Reporting’