IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Amin-ud-Din Khan
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan

Civil Petition No. 2367 of 2024
Appeal against the judgment dated 27.03.2024 passed by the Peshawar High Court, Peshawar in W.P.No.3377-P/2023

The Executive Director (P&GS) State Life, Principal Office Karachi and others ...Petitioners

Versus

Muhammad Nisar, Area Manager, State Life Corporation of Pakistan, Peshawar Zone, Peshawar ...Respondents

For the Petitioners: Malik Jawwad Khalid, ASC
Mr. Anis Muhammad Shahzad, AOR

For the Respondent: Mr. Noor Muhammad, ASC
(Through video link at Peshawar)

Date of Hearing: 16.09.2024

JUDGMENT

Muhammad Ali Mazhar, J:- This Civil Petition for leave to appeal is directed against the Judgment dated 27.03.2024 passed by the Peshawar High Court **("High Court")** in W.P.No.3377-P/2023 whereby the writ petition filed by the respondent was allowed.

2. The transitory facts of the case are that the respondent, at the time of his appointment, submitted relevant documents to show his date of birth as 22.09.1964. Therefore, as per departmental procedure, the respondent was intimated, on 27.02.2023, that he will attain the age of superannuation on 30.06.2024. The respondent, after receiving this intimation, filed a departmental representation wherein he insisted that his date of birth is 22.09.1966, according to

which he will attain the age of retirement on 21.09.2026. The competent authority dismissed the representation *vide* order dated 07.06.2023 and the respondent challenged this order and the letter dated 27.02.2023 by dint of W.P. No.3377-P/2023 before the Peshawar High Court, which was accepted *vide* impugned judgment.

3. The learned counsel for the petitioner argued that the learned High Court overlooked the documents produced by the petitioners that show the date of birth of the respondent as 20.09.1964, which was also mentioned in his old identity card as well as in his passport, which were produced by the respondent. It was further argued that the respondent did not seek any correction regarding the date of retirement until the verge of retirement. Just to prolong his tenure of employment, he approached the office for extension or correction of his age in the office record. It was further argued that the respondent only arrayed few officers of the corporation in the case, but failed to implead the corporation itself, which is the actual employer, rather than its officials.

4. The learned counsel for the respondent argued that the respondent joined the service of State Life Insurance Corporation of Pakistan ("Corporation") as Area Manager on 29.08.1996 and his date of birth in the service record was entered as 29.09.1964, but his actual date of birth is 22.09.1966 according to his Secondary School Certificate issued to him on 10.08.1983. He further contented that the date of birth of respondent was wrongly recorded as 22.09.1964 in his old Computerized National Identity Card ("CNIC"), but after rectification of the error in his date of birth, a new CNIC was issued to him which reflects the correct date of birth as 22.09.1966. Therefore, he prayed to the High Court to set aside the impugned letters issued by the department and give directions to correct the service record. It was further argued that the wrong entry in the date of birth was recorded when the respondent joined the service. It was further averred that the Secondary School Certificate of the respondent reflects his date of birth as 22.09.1966, which was not taken into consideration. The learned counsel himself referred to a Circular issued by the Corporation on 23.06.2015, in which it was announced that no change in date of birth of any employee should be

made if it is not requested within 2 years from the date of initial appointment and the same applies to this case.

5. Heard the arguments. The State Life Employees (Service) Regulations, 1973 came into existence on the 1st day of January, 1973, pursuant to S.R.O. 57(1)/73, issued in exercise of the powers conferred by Article 49 of the Life Insurance (Nationalization) Order, 1972, which are made applicable to the employees of State Life Insurance Corporation of Pakistan, except employees on deputation or on contract to whom they shall apply only to the extent, if any, specified in the terms of their deputation or contract, as altered from time to time. According to Regulation 2(c) (Definitions Clause), the term “employee” means a full time employee of the Corporation on monthly salary, but does not include salaried field officials whose emoluments are dependent on procuration of business except those who are classed as Area Managers by the competent authority. Under Regulation 3, the Board may delegate any of the powers vested in it by these regulations to the Chairman, or any of the Executive Directors and the Chairman or the Executive Directors may, delegate any of the powers vested in them by these regulations to any of the officers subordinate to them.

6. The expression “juristic person” encompasses a firm or corporation incorporated under the company law or through statutes commonly known as statutory corporations which may sue or be sued in its own name in the court of law as it is a legal entity with certain rights and obligations and acknowledged as a juristic person and separate legal entity. Legal rights and remedies can be enforced by a juristic person, which implies and insinuates a legal recognition to such enterprises by granting them the rights and responsibilities analogous to natural persons. Whereas, the turn of phrase “perpetual succession” articulates the perpetuation of any corporate entity or statutory organization even if the persons who started it or work for it are swapped or replaced, even despite any change in the substratum of the company/organization, as long as the corporation/organization legally exists.

7. The expression “*Dominus litis*” is a Latin legal maxim that means “master of the suit.” This axiom denotes a canon that a party who

originates a legal action should have command over the proceedings with the solitary right to make decisions with definitive obligation for managing the *lis* according to law. This principle acknowledges that the parties to the litigation are entitled to safeguard their interests and make decisions on how to settle disputes. At the same time, a crucial aspect that cannot be lost sight of is that this doctrine cannot be exercised in an arbitrary or capricious manner but it always depends on the judicial scrutiny to safeguard the ends of justice and the onerous duty lies upon the Court to ensure that there must be a right to some relief against such party in respect of the controversies involved in the proceedings, and to ensure that the correct or actual parties have been impleaded, in the absence of which no effective decree can be passed; which is primarily germane to mis-joinder or non-joinder of the parties. The principle of *dominus litis* cannot be overstretched in the matter of impleading the parties because it is the duty of the court to ensure that if, for deciding the real matter in a dispute, a person is a necessary or proper party, the court can order to implead such person and, similarly, can also order deletion of any such person from the plaint who is not found to be a proper or necessary party.

8. The expression misjoinder of party connotes that when somebody who has nothing to do with the cause of action is pleaded in the suit. The expression misjoinder also refers to an inappropriate association of a party to a criminal or civil lawsuit. The act of misjoinder of party or parties triggers unnecessary perplexity and inexactness in the legal proceedings which should have been avoided when a lawsuit is set into motion for redress of any grievance or claim. Whereas the non-joinder of a necessary party means the failure, of a person who should have been included either as a plaintiff or defendant, to join as party to a suit. No doubt, the suit may not be solely dismissed on the ground of non-joinder, but the court may allow necessary parties to be joined at any stage of the proceedings, but it is to be kept in mind that the decree or order of the Court cannot be effectively executed against the person who is not a party to the proceedings. A necessary party is that in whose absence the court cannot pass an effective decree. However, the objections to non-joinder or misjoinder should have been raised at an early stage.

If objection as to misjoinder or non-joinder are not raised in the court of first instance, then it may not be treated as a good ground for reversing decree or order when it does not prejudice the merits of the case. According to Section 99 of the Code of Civil Procedure, 1908 (“CPC”), it is clearly provided that no decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court. It is quite significant to note the language of this Section; it only accentuates the term “misjoinder” and not “non-joinder” which has its own implication and aftermath that it does not apply to non-joinder of a necessary party. The basic idea is to ensure that the Court should not render any decree or order which would be unproductive and redundant.

9. Under sub-article 5 of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”), the expression "person" includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan. In the same context, Order 1 Rule 1, CPC, is quite relevant which accentuates that all persons may be joined in one suit as plaintiffs in whom any right to relief in respect of a transaction or a series of acts or transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise. While Rule 3 elucidates that all persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist. However, under Order 1 Rule 10, CPC, it is provided, as a matter of convenience, that where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any

other person to be substituted or added as plaintiff upon such terms as the Court thinks just. At the same time, under sub-rule (2), the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

10. What is required to be ensured is that a proper and necessary party should be arrayed as defendant or respondent in matters of civil nature, including writ petitions, and if the defendant or respondent is a juristic person then obviously, the said entity should have been made party, rather than impleading its officials without impleading such legal entity. Employees/officials in any organization may come and go but the legal entity holds the perpetual succession till such time as it remains in the arena, therefore, the relief must be claimed against the legal entity and not against the officials alone. However, if some cause of action, which is personal in nature, is said to have been accrued against some officials, they may be sued, but if the impugned act is related to their official capacity i.e. by virtue of office and not their personal capacity, then they ought to have been joined with such legal entity/employer, so that if, on culmination of legal proceedings, any relief is granted to any person or employee, then the decree or order of the court may be swiftly executed without first resolving the issue of whether it is an order against the official or against the company/corporation. Furthermore, if the employee has left or is no longer in service, executing such an order against the officials could pose challenges, as the cause of action was related to their former official capacity. This raises various legal and factual issues, including whether, in the absence of impleading the actual employer, the relief granted against the officials should be enforced as vicarious liability by the company/corporation. If the company denies this, then obviously, it will lead to a multiplicity of litigation, prolonging the matter for several years before resolution. So in our

considerate wisdom, while invoking the writ jurisdiction of the learned High Court, the petitioner should have contemplated and deliberated the corporate structure of the State Life Insurance Corporation of Pakistan to array the proper and necessary party, rather than suing its officials only for the relief of correction in the date of birth in the service record. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled; therefore, it must be a question in the action which cannot be effectually and completely settled unless he is a party.

11. In the case of Manzar Zahoor Vs. Lyari Development Authority and another **(2022 SCMR 1305 = 2022 PLC (C.S) 1128)** (authored by one of us) this Court dwelled upon the Federal and Provincial Civil Servant laws and relevant Rules in order to examine the provisions accentuated therein for recording the date of birth at the time of induction or appointment and the precise procedure to apply for the correction or rectification of the date of birth in the service record on account of some genuine mistake and error within a period of 2 years but it was not left open for an unlimited period of time or at the rest and leisure of the applicant to wake up from a deep slumber and, on one fine morning, apply for the correction predominantly at the verge of retirement to secure the lease and premium in the length of service. In our view, it is obligatory for any employee to intimate his correct date of birth and to produce confirmatory documentary evidence at the time when the first entry is made in the service record which cannot be altered, except in the case of a clerical error, because the date of birth once recorded at the time of joining service is deemed to be final and thereafter no alteration in the date of birth is permissible.

12. It is an admitted position that in the original National Identity Card, the year of birth of the respondent was 1964, while in the CNIC prepared on 12.11.2002, again his date of birth was 22.09.1964. Even in his Passport (No.B2247910), his date of birth was 22.09.1964. However, the respondent was issued his new CNIC on 03.03.2023, wherein his date of birth was shown as 22.09.1966. The petitioner has attached the copy of the circular dated 23.06.15 issued by the Corporation, wherein it was categorically mentioned

that certain employees are placing a representation for the correction in the date of birth after having completed a number of years of service. Therefore, it was announced by means of the aforesaid circular that no change in the date of birth will be made if it is not requested within 2 years of the date of initial appointment. The respondent himself relied upon this circular and attached its copy with CMA No.9896 of 2024. The record reflects that the respondent first applied for the correction of his date of birth in the official record *vide* application dated 17.03.23 on the basis of his matriculation certificate issued in 1983, but no justification was shown in the application as to why he himself mentioned his date of birth as 22.09.1964 when he was appointed by the petitioner's company. It is also incomprehensible that even when he applied for a CNIC in 2002, why at that time the correction was not applied, and even in his passport, issued in 2010, he maintained the same date of birth. If we keep aside all the documents which the respondent himself submitted at the time of his engagement with the Corporation, and only look at the matriculation certificate, which is now relied upon by the respondent very forcefully, then, another crucial question is cropped up, that how, in the presence of two diversified sets of evidence with regard to the date of birth of one person, such factual controversy could be resolved in the writ jurisdiction or if it would be better for the respondent to opt for a remedy in a civil court where such factual dispute, if genuinely believed to be correct, could have been decided after recording of evidence of the parties; and that, too, should have been invoked by the respondent much earlier and not at the verge of retirement.

13. In the case of Government of Khyber Pakhtunkhwa though Chief Secretary Civil Secretariat, Peshawar and others Vs. Shah Faisal Wahab and others **(2023 SCMR 1642)** and Special Secretary-II (Law and Order), Home and Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar and others Vs. Fayyaz Dawar **(2023 SCMR 1442)** (authored by one of us) it was held that the extraordinary jurisdiction under Article 199 of the Constitution is intended to provide an expeditious remedy in a case where the illegality of an impugned action can be established without any elaborate enquiry or recording of evidence, but if some complicated or

disputed question of facts are involved, the adjudication of which could only possible to be resolved and decided by the Courts of plenary jurisdiction after recording evidence of the parties, then obviously the High Court should not embark on deciding convoluted issues of facts. The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any inquiry. The expression "adequate remedy" signifies an effectual, accessible, advantageous and expeditious remedy. In the case in hand, the remedy of filing civil suit was an appropriate and alternate remedy as *remedium juris* which was more convenient, beneficial, and effective. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties, can be determined only by the courts having plenary jurisdiction in the matter, and on such ground the constitutional petition was incompetent (Ref: State Life Insurance Corporation of Pakistan Vs. Pakistan Tobacco Co. Ltd. **[PLD 1983 SC 280]**).

14. In the wake of the above discussion, this civil petition is converted into an appeal and allowed. Consequently, the impugned judgment of the learned High Court is set aside and the writ petition filed by the respondent in the High Court is dismissed.

Judge

Judge

Judge

Islamabad
16th September, 2024
Khalid
Approved for reporting