

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO. 677-K OF 2019

(Against the Order dated 07.10.2019 passed
by the High Court of Sindh, Karachi in C.P.
No. D-4379 of 2019)

Manzar Zahoor

.....Petitioner

VERSUS

Lyari Development Authority and another

...Respondents

For the Petitioner:

Mr. Naveed Ahmed Khan, ASC
Ms. Abida Parveen Channar, AOR

For Lyari Development
Authority/Respondent No.1

Mr. Miran Shah, Addl., A.G.Sindh
Mr. K.A.Wahab, AOR
Mr. Irfan Ali Abro, Law Officer
Mr. Ali Gul Jalbani, S.O

Date of Hearing:

16.02.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil petition for leave to appeal is directed against the order dated 07.10.2019, passed by High Court of Sindh, Karachi, whereby the Constitution Petition filed by the petitioner was dismissed.

2. Seemingly, this Civil Petition is time barred, therefore, an application (C.M.A.No.347-K/2021) for condonation of delay was also moved by the petitioner. We have vetted the application and in agreement with the justifications set forth for explicating the cause of delay, the application is allowed and the delay is condoned accordingly.

3. The transient sequence of events of this Civil Petition is as under: -

The petitioner had challenged the Office Order dated 07.03.2014, issued by the Secretary Lyari Development Authority for conveying the retirement of the petitioner with effect from 22.03.2013. According to the backdrop of the events, the petitioner had moved a representation to the competent authority for rectification of his date of birth which was corrected pursuant

to the Notification dated 12.08.2013 issued in exercise of powers conferred by Rule 171 of the Sindh Civil Services Manual Volume-I. His date of birth was corrected as 23.03.1955 instead of 23.03.1953 accordingly. However on 27.02.2014, another Notification was issued by the Chief Secretary, Sindh, whereby previous Notification was withdrawn and the petitioner stood retired on attaining age of superannuation of 60 years with effect from 22.03.2013 in terms of an Office Order dated 07.03.2014 bearing in mind his earlier date of birth on record.

4. The learned counsel for the petitioner argued that the petitioner rightfully and lawfully served the department from March 2013 till February 2014 after allowing correction in his date of birth. The Notification approving the correction was issued after fulfilling all codal formalities and examining the documentary evidence produced by the petitioner at the relevant time. It was further contended that the subsequent notification rescinding the earlier notification was unlawful and had no legal sanctity. It was also not mentioned in any order that the salary which had been paid by the respondents to the petitioner during the period from March 2013 till February 2014 should be refunded. It was further contended that the learned High Court failed to consider the relevant documents and, without appreciating the relevant proposition of law and factual position, dismissed the petition with cost.

5. The learned counsel for the respondent No.1 argued that the date of birth of the petitioner as per the record of the respondent was 23.03.1953. At the verge of retirement, the petitioner was asked to submit required documents for full and final settlement but instead the petitioner filed a Civil Suit No.210/2013 before the learned Senior Civil Judge (Central) Karachi for declaration and modification of date of birth in his Secondary School, Certificate from 23.03.1953 to 23.03.1955. The Civil Court vide Order dated 18.03.2013 directed the Respondent-Department to maintain the status quo. Meanwhile, a Notification dated 12.08.2013 was issued for the modification of the petitioner's date of birth from 23.03.1953 to 23.03.1955. Thereafter, the petitioner withdrew his Civil Suit on 16.08.2013. It was further contended that, when the unjustified and baseless act of allowing correction in the date of birth at a much belated stage came into the knowledge of the concerned quarters, another notification was issued by the Chief Secretary, Government of Sindh on 27.02.2014 whereby the earlier Notification dated 12.08.2013 was withdrawn and the petitioner was retried from service with effect from 22.03.2013. It was further averred

that the petitioner had also approached the learned Ombudsman for challenging the Notification dated 27.2.2014 and the complaint was decided in favour of the petitioner vide Order dated 16.02.2018 but, on Appeal/Review filed by the respondent No.1, the learned Appellate Authority allowed the Appeal vide Order dated 29.05.2019 and set aside the Order of the learned Ombudsman. He further argued that the petitioner continued his work without any legal justification after attaining the age of superannuation on the basis of the status quo order granted by the Senior Civil Judge Karachi (Central) in his favour, hence he cannot take advantage of his own misdeeds.

6. Heard the arguments. In a nutshell, the petitioner, at the very verge of his retirement, applied for the correction in his date of birth. According to the petitioner, his actual date of birth was 23.03.1955 which was erroneously transcribed in the petitioner's Matric Certificate as 23.03.1953. The record brings to light the fact that, on 13.02.2013, the Lyari Development Authority through its Secretary sent a letter to the petitioner requesting him to submit a copy of his Matriculation Certificate and, in case of non-availability, to provide his Roll Number and the year of passing Matriculation examination for authentication of age. On 15.03.2013, another letter was communicated by the Secretary, Lyari Development Authority with reference to the earlier letter but no response was given by the petitioner thus, he was once again requested to furnish the required document for verifying his date of birth but instead of complying with the requirements envisaged under the aforesaid letters, the petitioner filed a Civil Suit No.210 of 2013 against the Board of Secondary Education Karachi, Board of Intermediate Education Karachi and Lyari Development Authority for declaration and change of date of birth in his Secondary School Certificate to the effect that his actual date of birth is 23.03.1955. The directions of the Civil Court were also sought against the respondents to make amendment in the record. The petitioner did not deny that, on filing the suit, he had not sought an interim injunction in his favour. In the meanwhile, he somehow or the other managed the change in his date of birth interdepartmentally and, as a consequence thereof, the Secretary to the Government of Sindh Local Government Department issued a favourable Notification on 12.08.2013 in which it was declared that the correct date of birth of the petitioner is 23.03.1955 rather than

23.03.1953. For ease of reference, the Notification dated 12.08.2013 is reproduced as under:-

"GOVERNMENT OF SINDH
LOCAL GOVERNMENT DEPARTMENT
Karachi, dated the 12th August, 2013
NOTIFICATION

No.SO(L&C) HTP/LDA/10-16/2013: Pursuant to the Rule-171 of the Sindh Civil Services Manual Volume-I and with the approval of Competent Authority and relying upon the original personal documentary evidence and records produced by the below named officer, the following correction is notified for the purpose of keeping the service records of the officer straight:-

The correct date of birth of Mr. Manzar Zahoor S/o Zahoor Ahmed, Chief Town Planner, Lyari Development Authority is 23.03.1955 (Twenty Third Day of March Nineteen Fifty-Five) instead of 23.03.1953.

SECRETARY TO GOVT. OF SINDH"

7. As soon as the petitioner succeeded to manage the unlawful and dishonest departmental favour for reduction of his age, he moved an application under Order XXIII, Rule 3, C.P.C. on 16.08.2013 for withdrawal of his Civil Suit No.210 of 2013 which application was allowed by the Court and the suit was dismissed as withdrawn. When some wrongdoing and impropriety was sensed or suspected whereby an unwarranted favour was extended to the petitioner, the Chief Secretary, Government of Sindh issued another Notification on 27.02.2014 whereby he rescinded and overturned the Notification dated 12.08.2013. The Notification dated 27.2.2014 is reproduced as under:-

"NO. SOIII (S&GAD)13-47/2013
GOVERNMENT OF SINDH
SERVICES, GENERAL, ADMINISTRATION
AND COORDINATION DEPARTMENT
Karachi, dated the 27th February, 2014
NOTIFICATION

Local Government Department's Notification No.SO(L&C) HTP/LDA/10-16/2013 dated 12.08.2013 regarding correction in date of birth of Mr. Manzar Zahoor, Chief Engineer (BS-20), Lyari Development Authority as 23.03.1955 instead of 23.03.1953, is hereby withdrawn and he stands retired with effect from 22.03.2013.

SAJJAD SALEEM HOTIANA
CHIEF SECRETARY
GOVERNMENT OF SINDH"

8. By dint of the aforesaid notification, the Secretary, Lyari Development Authority issued an Office Order dated 07.03.2014, whereby the petitioner was informed of his retirement from service with effect from 22.03.2013. This notification is also reproduced as under:

"LYARI DEVELOPMENT AUTHORITY
1st Floor Apollo Centre, Unit No.3, Dalmia Road, Karachi
No. DG/LDA/2014/173, Dated 07.03.2014

OFFICE ORDER

In pursuance of Government of Sindh's Services General, Administration & Coordination Department notification No.SOIII (S&GAD)13-47/2013 dated 27-02-2014, Mr. Manzar Zahoor, Chief Engineer, Lyari Development Authority has been retired from his service on 22-03-2013 at the age of superannuation i.e. 60 years.

SECRETARY
LYARI DEVELOPMENT AUTHORITY"

9. Indeed the petitioner had challenged the above Notification in his Constitution Petition No.4379/2019 before the Sindh High Court, Karachi which was dismissed on 07.10.2019 with cost. It is somewhat astonishing to note that the petitioner had concealed the factum of filing a civil suit in the memo of petition, and its subsequent withdrawal. The actual date of birth in the matriculation certificate of the petitioner is still the same, for all intent and purposes, as no declaration of any Court in his favour for change in date of birth exists but, by hook and crook, he managed to get the alleged correction at the interdepartmental level rather than any direction or the support of any judicial Order, Judgment or Decree. The petitioner has also not denied that, after filing the suit, the interim order was in effect for a long time during which he continued to perform his duties under the garb of such order. The Notification dated 12.08.2013 was issued pursuant to Rule 171 of the Sindh Civil Services Manual Volume-I with the approval of Competent Authority relying on the "original personal documentary evidences and records produced by the below named officer", but in this very same Notification no specific document or any other details are mentioned which may justify the alteration of the petitioner's year of birth from "1953" to "1955". No justification has been articulated by the petitioner from beginning to end as to why the date of birth, if recorded incorrectly, was not applied to be corrected at the initial stage and why, at the verge of retirement, the petitioner got the sense to apply for such correction which, on the face of it, seems to be *mala fide* and motivated by the sole intention to reap unlawful, dishonest and unfair benefits, and to enlarge his length of service under the guise of the so-called plea of incorrect date of birth.

10. In the case of Ali Azhar Khan Baloch and others vs. Province of Sindh and others (2015 SCMR 456), this Court held that 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 the 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, the principles laid down in the case of Dr. Muhammad Aslam Baloch v. Government of Balochistan (2014 SCMR 1723) are fully attracted. While in the case of Muhammad Khaliq Mandokhail. vs Government of Balochistan through Chief Secretary, Civil Secretariat Quetta and another (2021 SCMR 595), this Court while relying on the dictum laid down in the case of Ali Azhar Khan Baloch (supra) held that a Civil Servant could not seek alteration in his date of birth at the verge of his retirement. It was further observed in the above case that the material produced and examined by the Tribunal clearly suggested that the petitioner got changed his date of birth when he was at the verge of his retirement. Similarly, in the case of Inspector General of Police, Balochistan, Quetta and others vs. Mohibullah (2022 SCMR 9), this Court while reiterating the case of Muhammad Khaliq Mandokhail v. Government of Balochistan (2021 SCMR 595), Chief Secretary, Government of Balochistan v. Asmatullah Kakar (2020 SCMR 1678) and Muhammad Aslam Baloch v. Government of Balochistan (2014 SCMR 1723) held that the date of birth once written in the service record at the time of entering into service cannot be altered or changed and, in any case, it cannot be done after two years.

11. In order to thrash out the interconnected provisions of law and the Rules embodied to deal with the date of birth and its alteration or correction during service at some point of time, we have also analyzed and explored the relatable legislation exemplified and or integrated both in the Federal and Provincial civil servant laws. To start with, we would like to focus and distillate on "The Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974". Rule 12-A is quite evocative and resonant which is reproduced as under:-

[12-A. The date of birth once recorded by a civil servant at the time of joining Government Service shall be final and no alteration thereafter shall be permissible.]

12. It is quite clear from reading of above Rule that there is no possibility or probability of alteration in date of birth once recorded

at the time of joining but in the case of present petitioner, the date of birth was allegedly corrected or modified pursuant to Rule-171 of the Sindh Civil Services Manual Volume-I with the approval of the Competent Authority, therefore we also deem it expedient to reproduce the Civil Service Regulation 171 as under:-.

Combined Set of Sindh C.S.R. Vol. I & II (Revised Edition 2014)

171. In the service book every step in a Government servant's official life including temporary and officiating promotions of all kinds, increments and transfer, and leave of absence taken, should be regularly and concurrently recorded, each entry being duly verified with reference to departmental orders, pay bills, and leave statements, and attested by the head of the office. If the Government servant is himself the head of an office, the attestation should be made by his immediate superior, Officiating and temporary service and leave taken prior to first substantive appointment to a permanent post should also be recorded in the service book and duly attested after verification. The date of birth should be verified with reference to documentary evidence and a certificate recorded to that effect stating the nature of the document relied on:

Provided that in the case of inferior Government servants, if documentary evidence is not available, the age should be determined by the appointing authority with reference to the statement of respectable persons, medical opinion, etc., and any other evidence he may think proper to take.

In the case of a Government servant, the year of whose birth is known but not the date, the 1st July should be treated as the date of birth. When both the year and the month of birth are known, but not the exact date, the 16th of the month should be treated as the date of birth.

In the case of a Government servant who is only able to state his approximate age, and who appears to the attesting authority to be of that age, the date of birth should be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment. When the date, month, and year of birth of a Government servant, are not known, and he is unable to state his approximate age, or when the appointing authority does not accept the age stated by the Government servant, the age by appearance as stated in the medical certificate of fitness, in the form prescribed in Rule II should be taken as correct, he being assumed to have completed that age on the date the certificate is given, and his date of birth deduced accordingly.

When once an entry of age or date of birth has been made in a service book, no alteration of the entry should afterwards be allowed, unless it is known that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error. Officers of a rank not lower than the Principal District Officer in the Department concerned may correct errors in the service book which are obviously clerical. Cases in which the correctness of the original entry is questioned on other grounds should be referred to a competent authority.

Finger prints of the Government servants should be recorded in the column headed "Personal marks of identification" in the service book itself. The impressions should not be taken on separate slips of paper and pasted to the service book.

Exception.—When a military employee is transferred to a civil department and assumes a civilian status or when a military employee discharged from the army without earning a pension is employed in a

post in a civil department in which his military service counts towards pension, the date of birth to be entered in his service book or roll shall be either that entered by the Military authorities in his form of attestation when he first joined the army or, if at the time of attestation he stated only his approximate age the date arrived at by deducting the number of years representing his age from his date of attestation.

Note.- Cases in which prior to 28th September, 1938 the date of birth has been deducted by any other method, from the age at appointment or attestation, or cases in which Government have passed specific orders accepting a particular date of birth, need not be re-opened.

Instruction.- Officers competent to alter dates of birth should see that no change in the date of birth which will be to the advantage of the Government servant concerned is allowed unless an application in that behalf is made by the Government servant concerned within two years of the date on which his service book was opened under Sindh Civil Services Rule 167. All cases in which applications are made after the period of two years referred to above should be submitted to Government for orders. The date of birth is to be verified with reference to documentary evidence and a certificate is to be recorded to that effect stating the nature of the document relied on as required under Rule 171. A change in the date of birth should not, therefore, be allowed on the evidence which could be available to a Government servant when he entered Government service and his date of birth was recorded in the service book.

13. Nevertheless, the aforesaid Rule has been relied by the respondents for making correction in the date of birth but, before relying on or applying this very Civil Service Regulation, certain riders or rudiments were to be followed mandatorily. The gist of this Rule, in essence, unequivocally demonstrates that the date of birth was to be verified with reference to documentary evidence and a certificate recorded to that effect stating the nature of the document relied upon but nothing is mentioned on record with regard to the documents produced and examined while extending the benefit of correction to enlarge the petitioner's length of service at the verge of his retirement. Moreover, this rule further expounds that, once an entry of age or date of birth has been made in a service book, no alteration of the entry should afterwards be allowed, unless it is known that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error. Furthermore, the instructions encompassed in the Rule state that Officers competent to alter dates of birth should note that no change in the date of birth will be allowed unless an application is made by the Government servant within two years of the date on which his service book was opened under Rule 167 of the Sindh Civil Services Manual. The most indispensable constituent is that, if an application is made after the period of two years, it should be submitted to the Government for orders and the change in the date

of birth should not be allowed on the evidence which could be available to a Government servant when he entered Government service and his date of birth was recorded in the service book. So in our considerate view, while extending benefit to the petitioner even under this Rule, the aforesaid Regulation was not followed in its letter and spirit as correction much after two years, or at the verge of retirement after a long period of service with the originally entered into date of birth was not possible. Be that as it may, the application was to be moved to the government for orders so consistent with Article 129 of the Constitution which delineates that the executive Authority of the province shall be exercised in the name of Governor by the Provincial Government consisting of Chief Minister and Provincial Ministers which shall act through the Chief Minister and the substratum of Cabinet, as accentuated under Article 130 of the Constitution. So, in our estimation, the condition stipulated under Civil Service Regulation No.171 that "All cases in which applications are made after the period of two years referred to above should be submitted to Government for orders" evokes that it was to be placed before the government for just and proper decision which is also lacking and missing in this case as the letter of correction issued by the Secretary to Government of Sindh, Local Government Department on alleged concurrence of competent authority without identifying the stature of authority was illegal and in all fairness, such letter was rightly withdrawn by the Chief Secretary, Sindh. Besides the above, the fact remains that under the "Sindh Civil Servants (Appointment, promotion & Transfer) Rules, 1974", no legitimate or authoritative provision is advocated for correction in the date of birth in the Sindh Civil Servants service structure, however, some space or window has been encapsulated under the CSR-171 with certain riders and qualifications which were required to be fulfilled, but were deficient in the case of petitioner, therefore he was rightly non-suited by the High Court and we do not find any illegality or perversity in the impugned judgment.

14. In order to dwell on the principles envisioned in different rulebooks for providing a pathway of alteration in the date of birth within or after two years of initial appointment or at any point of time, we will embark upon the "The Civil Servants (appointment, Promotion & Transfer) Rules, 1973" (**"Federal Civil Service Laws"**). Upon a constructive

analysis, we find Rule 12-A which deals the alteration in the date of birth as under:-

[12A. Alteration in the date of birth.- The date of birth once recorded at the time of joining government service shall be final and thereafter no alteration in the date of birth of a civil servants shall be permissible.]

(Rule 12A inserted by the S.R.O 521(I)/2000, the Gaz. of Pak., Extr., Pt. II, dated the July 31, 2000)

15. The aforesaid Rule makes it clear that, even in the Federal laws of Civil Servant service structure, no provision is accessible for correction or alteration in the date of birth, either at the verge of retirement, or even two years after joining. The SR Nos.197 to 202 (Service Regulations) meant for Gazetted and Non-Gazetted Government Servants (Ref: **Combined set of F.R. & S.R. Volumes I & II (Revised Edition) Part-II-Records of Service Division-VII Gazetted and Non-Gazetted Government Servants**) are germane to the attainment of the prerequisites envisaged for Service Book, but do not provide any provision for the correction of one's date of birth at any stage. Moreover, Rule 116 of the General Financial Rules of the Federal Government, Volume I & II (G.F.R) also does not allow any change or alteration in the date of birth except in the case of a clerical error without the previous orders of the Local Administration. The relevant excerpt from the **General Financial Rules of the Federal Government Volume I & II (G.F.R)** is reproduced as under:-

DATE OF BIRTH

116. Every person newly appointed to a service or a post under Government should at the time of the appointment declare the date of his birth by the Christian era with as far as possible confirmatory documentary evidence such as matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under para. 117 should be recorded in the history of service, service book, or any other record that may be kept in respect of the Government servant's service under Government and once recorded, it cannot be altered, except in the case of a clerical error, without the previous orders of the Local Administration. [Emphasis supplied]

16. According to the exactitudes of **CSR No.197 to 202 (Civil Service Regulations)**, it is the duty of every Government servant to ensure his Service Book is properly maintained as prescribed in Rule 199 *ibid*, and

the Head of the Department is duty-bound to permit a Government servant to examine his Service Book at any time he wishes to do so. In one fell swoop, as a token of scrutiny and acceptance of entries in the Service Book, the official has to sign his name in the relevant column of the Service Book and the official who supervised the scrutiny will have endorse his signature as evidence that the scrutiny was conducted under proper supervision and the supervising officer is satisfied that it was *bona fide* and that no unauthorized changes were made in the entries in the Service Book in the course of such scrutiny. Taking into consideration the above stipulations, it is clear beyond any doubt that no provision exists in Federal Civil Servant Rules or laws which may permit an alteration in the date of birth except in the case of a clerical error, and no condition is endorsed or jotted down stating that the correction should be applied for within two years which right of way is weird and alien to the Civil Servant Rules, Civil Service Regulations and General Financial Rules of the Federal Government Volume I & II (G.F.R).

17. So far as "Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974" are concerned, Rule 21-A is relevant which is reproduced as under:-

21-A (1) No person, not already in Government service, shall be appointed to a post unless he produces a certificate of character from the Principal Academic Officer of the academic institution last attended and also certificates of character from two responsible persons not being his relatives who are well acquainted with his character and antecedents.

(2) Notwithstanding anything in sub rule (1) an appointment by initial recruitment shall be subject to the verification of character and antecedents of the candidate or the person appointed to the satisfaction of the appointing authority.

(3) Alteration in the date of birth. The date of birth once recorded at the time of joining Government service shall be final and thereafter no alteration in the date of birth of a civil servant shall be permissible. [Emphasis supplied]

(4) The appointing authority shall complete the process of appointment within one hundred and ninety days from the date of issue of recommendations by the Punjab Public Service Commission and no request for extension in the joining time as specified in the offer of appointment shall be entertained.

(5) If a person to whom offer of appointment has been issued fails to join his post within the period specified in the said offer of appointment, his selection shall automatically stand cancelled.

18. Nothing said in the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 for any scope or possibility of alteration in the date of birth once recorded, however, some breathing room has been accorded to civil servants for alteration in the date of birth pursuant to Punjab Financial Rules Vol-I, Chapter VII, and some other Circulars issued from time to time bearing in mind the Financial Rules which are reproduced as under:-

"Punjab Financial Rules Vol I

(Chapter VII Pay, Allowances, etc. of Establishment)

Annexure B (Referred to in Rule 7.3 and note. 3 thereunder) 1. In regard to the date of birth a declaration of age made at the time of, or for the purpose of, entry into Government service shall, as against the Government servant in question, be deemed to be conclusive unless he applies for correction of his age as recorded within two years from the date of his entry into Government services. [Emphasis supplied] Government, however, reserves the right to make a correction in the recorded age of a Government servant at any time against the interests of that Government servant when it is satisfied that the age recorded in his service book or in the History of Services of an officer is incorrect and has been incorrectly recorded with the object that the Government servant may derive some unfair advantage therefrom".

"No. SOR.II(S&GAD)6-4/75 Dated 4th September, 1975

Subject: ALTERATIONS IN THE RECORDED DATE OF BIRTH OF GOVERNMENT SERVANTS

I am directed to refer to the circular letter No. 20076(H)Gaz., dated 4th August, 1928, in which it was laid down that a declaration of age made by a Government servant at the time of or for the purpose of entry into Government service shall be deemed to be conclusive unless he applied for the correction of his date of birth within two years of the date of entry into service. It was further laid down that Government servants, who were then in service, could, if necessary, apply for correction of recorded date of birth within one year of the issue of that communication.

2. This policy was further reconsidered by the Government in the year 1954, and vide its circular letter No.4375-54/Gaz, dated 30th September, 1954, the then Punjab Government held the view that it was incumbent upon a Government servant to ascertain his correct date of birth and to produce proper proof in support thereof at the time when first entry to that effect was made in the Government record and that no subsequent alteration should be permitted to be made therein. It was, therefore, decided that applications from Government servants for change in the recorded date of birth should not at all be entertained in future and that they should be rejected straightway.

3. It has, however, come to the notice of Government that above policy is not being followed strictly by certain departments and applications are being entertained for the correction of the recorded date of birth, in some cases, even, at a time when the officials are due to superannuate. This is not only in violation of the above policy of the Government but also results in delaying their pension cases.

4. I am, therefore, to request you to ensure that the above instructions are strictly followed and case/cases of exceptional nature only may be sent to this department, with full justification,

for obtaining the orders of the Chief Minister for the relaxation of the rules in their behalf. I am to request further that these instructions may kindly be brought to the notice of all concerned for strict compliance”.

“No. SOR.IV(S&GAD)6-7/84 Dated 13th November, 1984

Subject: **ALTERATION IN THE RECORDED DATE OF BIRTH OF GOVERNMENT SERVANTS**

I am directed to refer to this department's circular letter No. SOR.II (S&GAD) 6-4/75 dated 04.09.1975, on the above subject.

2. Para 1 of Annexure-B of Rule 7.3 of Punjab Financial Rules, Vol. I, envisages that in regard to date of birth a declaration made at the time of, or for the purpose of entry into Government service, shall be deemed to be conclusive unless he applies for correction of his age as recorded within two years from the date of his entry into Government service. Government, however, reserves the right to make a correction in the recorded age of a Government servant at any time against the interest of that Government servant when it is satisfied that the age recorded in his service book or in the history of services of a gazetted Government servant is incorrect and has been so recorded with the subject that the Government servant may derive some unfair advantage therefrom. It is incumbent on a Government servant to ascertain his date of birth and to produce proper proof in support thereof at the time of his first entry into Government service. No request for correction/alteration in the recorded date of birth should be entertained at all if made after two years of date of entry into service. [Emphasis supplied]

3. It has been observed that the provisions of rules and instructions issued from time to time are not being followed with the result that cases for change in the recorded date of birth of officials/officers are referred to Government even after their superannuation. According to note 2 of rule 7.3 of Punjab Financial Rules Vol. I, correction in the date of birth recorded in the service record of a Government servant cannot be made without the sanction of Government in case of officers in BS-16 and above and of the head of department or the commissioner of a division in the case of ministerial and subordinate employees. Against every such correction a note has to be made of the number and the date of the order authorizing it and a copy of the order has to be placed on record.

4. It has been observed that the Audit Department refuses to admit change in the date of birth Government servants even if that is disadvantageous to them. In order to avoid hardship to the employees who have already retired and in whose record the date of birth is found to have been changed, it is clarified that the date of birth originally recorded should be admitted as the real date of birth irrespective of any evidence to the contrary. In cases where the original date is not legible, sanction of Government in S&GAD must be obtained after fixing responsibility for mutilation of the original entry and furnishing full justification for acceptance of the change. The officers incharge of offices and departments who have custody of service records of the employees working under them must examine service books/rolls of all employees under their charge and ensure that change in question, if any, is taken care of well before the retirement of the concerned employees and necessary action is taken against the persons responsible for tampering with official record. The above officers shall, henceforth, be held personally responsible for unauthorized change of entries in such record.

5. The above instructions should be brought to the notice of all concerned”.

"No. SOR.IV(S&GAD)6-7/84 Dated 1st April, 1985

Subject: **ALTERATION IN THE RECORDED DATE OF BIRTH
OF GOVERNMENT SERVANTS**

I am directed to refer to instructions issued from time to time on the above subject and to say that it has been observed that in a large number of cases of former work charged employees, brought into regular establishment in 1972 and 1973 as a matter of general policy, the question of change in their date of birth is raised after their retirement resulting in delay in finalization of their pension cases. Although service record of such temporary employment was not required, to be maintained service books were prepared in a large number of cases but particulars, such as age, were recorded therein without any proper verification. Such verification became necessary at the time of conversion of work charged employment into regular establishment. Formal methods of verification of age on the basis of medical opinion or documentary evidence in the nature of school leaving certificate or military discharge certificate, etc., indicated dates of birth different from the earlier dates recorded in a casual manner. Since change in date of birth of Government servants is not allowed after two years of entry into service the audit offices ask for sanction for such change before authorizing payment of pensionary benefits. Since this unnecessarily delays settlement of the pensionary claims, it has been decided in consultation with the Finance Department, that in future sanction of Government to change in date of birth of former work charged Government servants, if made, should be presumed to have been granted. The pension cases of such retired employees should not be held up on account of change in the date of birth. The date recorded after conversion of their work charged employment into regular establishment should be admitted as the correct date of birth. It is requested that all Audit Officers under your administrative control may be instructed accordingly".

19. The nucleus of Punjab Financial Rules Vol. I and the Circulars issued in pursuance thereof envision that the date of birth recorded at the time of, or for the purpose of entry into Government service, shall be deemed to be conclusive and no correction shall be made unless applied for within two years from the date of entry into Government service, and no request for correction/alteration in the recorded date of birth should be entertained after two years.

20. In the queue, we have also flicked through Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 wherein Rule 11 is dominant to the alteration in date of birth which is as under:-

11. The date of birth of a civil servant once recorded at the time of joining the 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:

Provided that, no request of a civil servant on this ground shall be entertained after a period of two years from the date of such entry in his service record; and all such cases shall be decided by

the Appointing Authority, on the recommendation of an Enquiry Committee with the following composition:

- | | |
|--|-----------------|
| 1. Senior Member, Board of Revenue | Chairman |
| 2. Secretary, S&GAD | Member |
| 3. Secretary, Law Department | Member |
| 4. Secretary of the concerned
Administrative Department | Co-opted Member |

21. The exploration and scrutiny of Federal and Provincial Rules on the subject deciphered that only in the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, there is a express provision in the Rules itself stating that no alteration in the date of birth shall be permissible, except, where a clerical mistake occurs in recording the date of birth and that no request shall be entertained after a period of two years from the date of such entry in the service record.

22. We have also glanced over the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 but do not find any specific provision for correction or alteration in the date of birth, however, it is regulated by the provision incorporated in the **Esta Code [Establishment Code KPK]** for making changes in the recorded date of birth of the civil servants as under:-

“ESTA CODE [Establishment; Code Khyber Pakhtunkhwa]
Change in the recorded date of birth of the civil servants.

I am directed to say that under the existing rules, immediately after his induction into service, every civil servant is required to declare the date of his birth by the Christian era with as far as possible confirmatory/conclusive evidence such as matriculation certificate, municipal birth certificate and so on. This is supplemented by the opinion of the Civil Surgeon/Standing Medical Board. The department after full satisfaction with age and on the basis of medical examination of the new entrant in the department, enter the same in an authentic document i.e. Service Book/History of Service etc. The said document is maintained by the Department/Audit and is always checked periodically.

2. The date of birth of a civil servant as recorded in his service documents remains constantly in his knowledge. This is reiterated in his ACRs and the Seniority List issued by the department from time to time. The preparation of service record of an officer is an official act and according to law, it is presumed to be correct. GFR-116 also provides that the date of birth once recorded cannot be altered except in the case of clerical error, without the previous orders of the Local Administration. Despite this, certain Government Servants are complacent with the state

of affairs and sleep over their rights for decades knowing fully about their dates of birth entered in their Service Books etc. It would therefore be too much to accept such a belated claim from a Civil Servant that he was born on a date other than the one entered in his service documents and that the delay in representation was due to ignorance of the alleged erroneous entry. After all, there is always attached a finality to decisions taken by competent authorities.

3. I am, accordingly, directed to request that all concerned may please be informed in clear terms that in future a request for an alteration in the recorded date of birth of a Government servant may only be entertained by the Appointing Authority in the case of officers in BS-17 and above and by the Administrative Department in the case of civil servants in BS-16 and below, after special enquiry and only if the Government servant applies for it within two years from the date of his entry into Government service. [Emphasis Supplied]

(Authority No.SOR. II (S&GAD)5(40)/87, dated 15th February, 1989"

23. In the wake of above discussion, we have reached to the finale that the notification permitting the alteration in the date of birth of the petitioner at the verge of his retirement was issued in violation and contravention of the law, therefore it was lawfully rescinded by the Chief Secretary, Sindh in order to rectify the error, hence the principle of *locus poenitentiae* does not apply. The Civil Petition is dismissed and leave is declined.

Judge

Judge

Karachi
16th February, 2022
Khalid
Approved for reporting.