

94/27

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN

APR
Civil Appeal No.579 of 2021

Against judgment dated 28.01.2021 of Balochistan
Service Tribunal, Quetta passed in Service Appeal
No.132 of 2020.

IGP, Balochistan, Quetta & others

Appellant(s)

Versus

Mohibullah

Respondent(s)

For the Appellant(s): Mr. Muhammad Ayaz Khan Swati,
Additional AG, Balochistan

For the Respondent(s): Raja Jawad Hassan Khan, ASC
(Via Video Link Quetta)

Date of Hearing: 02.11.2021

ORDER

GULZAR AHMED, CJ- We have heard the learned Additional Advocate General, Balochistan as well as learned ASC for the Respondent, who has appeared through video link from Quetta and gone through the case record. It appears that the Respondent Mohibullah was employed as an Assistant Sub Inspector in Balochistan Police and elevated to the rank of DSP. At the time of his entering into government service, the Respondent himself filled in a form of character and service roll dated 24.01.1980. In the column of date of birth of the said form, he mentioned his date of birth as

20.01.1960. It seems that vide letter dated 30.09.2019 issued by the Central Police Office, Balochistan Quetta, retirement date of the Respondent on his attaining the age of superannuation was communicated to him. It was mentioned in the list attached with the said letter that as his date of birth is 20.01.1960 therefore he will be retiring from service on 19.01.2020. The Respondent through his letter in November, 2019 available at page 34 of the paper book seems to have responded to the letter of the CPO dated 30.09.2019 in which for the first time he informed that his date of birth as per his CNIC is of 1961. The Appellants did not accept such letter of the Respondent, thereupon he filed a Service Appeal in Balochistan Service Tribunal, Quetta claiming that his date of birth is 20.12.1961. The Tribunal, vide impugned judgment dated 28.01.2021 allowed the Service Appeal filed by the Respondent on the ground that his Service Book was not produced before the Tribunal which was a primary document showing the date of birth of the Respondent.

2. The learned Additional Advocate General, Balochistan has contended that the Tribunal made a serious mistake of law in allowing the Service Appeal of the Respondent, in that, Rule 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules,

2009 (**"Rules, 2009"**) does not allow changing of date of birth by an employee after two years of his entering into government service. He further contends that the Respondent has also not approached the inquiry committee constituted under Rule 11 of the Rules, 2009 for the purpose of his seeking alteration in the date of birth. In support of his contentions, the learned Law Officer has relied on 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) where this Court has elaborately dealt with the question of alteration of date of birth of a Government employee and came to the conclusion that the date of birth once written in the service record at the time of entering into service cannot be altered or changed in any case it cannot be done after two years.

3. On the other hand, learned ASC for the Respondent when confronted with a document namely character and service roll of the Respondent dated 24.01.1980, admitted that there is a signature of the Respondent so also the finger prints as well as the thumb impression but stated that this form was obtained by the Appellants from the Respondent in blank and thereafter

they themselves filled in the said form. We have asked the learned ASC for the Respondent to show us as to whether such an allegation has been made by the Respondent, but the learned counsel has not been able to show any such material from the record.

4. Admittedly, the document (*character and service roll of the Respondent*) was prepared on 24.01.1980 when the Respondent entered into government service and it contained his date of birth as 20.01.1960. It was for the first time that the Respondent came up with a plea that his date of birth is of 1961 as mentioned in letter of November, 2019 in which too, he did not give any exact date of his birth but stated that so is mentioned in his CNIC.

5. Rule 11 of the Rules, 2009 clinching the controversy before us is as follows:

"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 Co-opted Member Administrative Department"

The above provision of law in a very unequivocal term provided that the date of birth once entered in the service record will not be altered and if any alteration is to be sought, the same has to be done within a period of two years of joining the service and not thereafter. Though the Tribunal in the impugned judgment has mentioned about this very Rule but incidentally found it to be not applicable to the case of the Respondent. We note that the reason assigned by the Tribunal for not applying the said rule apparently is not in accordance with law, more so, the law established by this Court in the cited judgments and thus the Tribunal made a serious mistake of law in coming to the conclusion which it did in the impugned judgment.

6. Having considered the submissions made by the learned Law Officer as well as learned ASC for the Respondent and going through the case record, we note that the Respondent gave his date of birth at the time of entering into service as 20.01.1960 and that until November, 2019 the Respondent had no cavil with such entry of date of birth in record of his service. The learned ASC for the Respondent relies on the date of birth mentioned in the pay slips of the Respondent. We note

that copies of such pay slips are not acceptable as the same pertaining to the year 2018 have been placed on record by the Respondent *prima facie* at a belated stage and thus are of not much help to the case of the Respondent more so when his very character and service roll contained his date of birth as 20.01.1960. The judgment of the Tribunal dated 28.01.2021 impugned before us is not sustainable in law, being against the well settled principles of law on the point and is thus set aside. Consequently, the appeal is allowed.

ISLAMABAD, THE

2nd of November, 2021

ZR/*

'Not Approved For Reporting'