

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE AMIN-UD-DIN-KHAN
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO. 3112 OF 2020

(Against the judgment dated 21.09.2020
passed by the Sindh Service Tribunal at
Karachi, in Appeal No.329 of 2020)

Ali Bux Shaikh

...Petitioner

VERSUS

The Chief Secretary, Government of Sindh, Karachi and others

...Respondents

For the Petitioner

Agha Muhammad Ali Khan, ASC
Syed Rifaqat Hussain Shah, AOR

For Respondents:

Mr. S.M. Saulat Rizvi, Add: A.G.
Through Video link (Karachi)
Mr. M. Nasir, DIG (Prison)

Date of Hearing:

27.09.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the Judgment dated 21.09.2020, passed by the Sindh Service Tribunal at Karachi ("Tribunal"), whereby Service Appeal No.329 of 2020 filed by the petitioner was dismissed.

2. The transient facts of case are that the petitioner was appointed as Assistant Superintendent Jail (BS-14) in the year 1990. According to him, his date of birth was recorded as 01.01.1961 in the Service Book but in the provisional seniority list circulated by the Home Department on 15.06.2017, the date of birth of the petitioner was shown as 01.01.1958. The petitioner challenged this anomaly by filing a departmental appeal before the Home Department. The notification of retirement of the petitioner was issued on 27.10.2017, conveying his date

of retirement as 31.12.2017. Meanwhile, the petitioner also submitted his grievance to the concerned Minister and, according to him, the opinion of the Law Department was also sought. Thereafter, his retirement notification was withdrawn vide another Notification dated 26.08.2019, however, vide Notification dated 22.1.2020, the Home Secretary kept the earlier Notification dated 26.8.2019 in abeyance. Being aggrieved, the petitioner filed the aforesaid Service Appeal before the learned Tribunal, with the prayer that the impugned Notification dated 22.01.2020, whereby notification dated 26.08.2019 was held in abeyance, be declared illegal, but this request was not acceded to by the learned Tribunal.

3. The learned counsel for the petitioner argued that the date of birth of a civil servant, once recorded at the time of joining service, cannot be altered in terms of Rule 12-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. The Home Department's act of disputing the date of birth of the petitioner was illegal. After thorough probe, the Notification conveying the petitioner's date of retirement was rightly withdrawn vide subsequent Notification dated 26.08.2019, hence there was no justification to keep the said notification in abeyance. It was further averred that the learned Tribunal had not only ignored the educational testimonials of the petitioner, but also failed to consider other important aspects and dismissed the appeal without proper application of mind.

4. Heard the arguments. The petitioner has already been retired from service with effect from 31.12.2017, pursuant to the notification dated 27.10.2017. The nitty-gritties of the case make it obvious that, against the provisional seniority list dated 15.6.2017, the petitioner filed a representation by means of which he asserted that his correct date of birth is 01.01.1961, and not 01.01.1958, and he also made a request for correction but his representation was rejected vide order dated 15.9.2017, passed by the competent authority. According to the line of argument dredged up by the Home Department, there was some interpolation in the service book, as the date of birth of the petitioner at the time of entry in service was recorded as 32 years based on a medical examination dated 19.06.1990, but in the attested copies of the service book his age was shown as 29 years. So far as the notification dated 26.08.2019 is concerned, it was articulated that it was managed by the

petitioner to frustrate his retirement notification and such unlawful favour was attained on the basis of a fake certificate from the Board of Intermediate and Secondary Education, Hyderabad, Sindh ("Board"). The learned counsel for the petitioner invited our attention to the letter of the Board dated 20.12.2019 which was communicated to the Home Secretary, Sindh with regard to the verification of the petitioner's testimonial in which it was averred that, according to their record, the date of birth of the petitioner is 1.1.1961. However, this letter was declared fabricated and fake vide another letter dated 28.07.2020 by the Board through its Controller of Examination in which they re-verified, according to their record, that the date of birth of the petitioner is 1.1.1958, hence there is no substance in the argument of the learned counsel for the petitioner that earlier the Board had verified the date of birth of the petitioner as 1.1.1961 as this was found to be a forged/fabricated document.

5. The record also reflects a certificate issued by the Board on 10.07.2020 through the Controller of Examinations to the Additional Chief Secretary, Home Department, Sindh, which affirms that after due verification from the relevant record of the Board, two certificates (i.e. E072895 and E065517) of the candidate Ali Bux s/o Muhammad Azeem (seat No. 27753) of Annual Examination 1976 (Second Division) with the date of birth 1.1.1961 were found to be bogus and had never been issued by the Board. However, the third certificate bearing No. E072895 of Annual Examination 1976 with the date of birth 1.1.1958 was found to be correct and issued by the Board. The Notification dated 29.07.2020 is also worth mentioning which encompasses the decision of the Additional Chief Secretary, Home Department, Sindh with regard to the claim of the petitioner for alleged correction in the date of birth which was rendered after providing an opportunity of personal hearing to the petitioner where he was also confronted with his Matric Certificate, on which his date of birth was shown as 1.1.1958 as well as a proforma submitted by himself containing his date of birth as 1.1.1958. It is further reflected from the aforesaid notification that the petitioner was also confronted with his past seniority lists containing the same date of birth which were never challenged by the petitioner.

6. In order to verify the truthfulness of the petitioner's claim, the learned Tribunal also summoned the Original General Register from the Primary School in which the petitioner was admitted, but the leaf containing his name and date of birth was found torn by using the tape solution and no other page was found in such condition. The letter of the Board referred to above also made it clear that the actual date of birth of the petitioner is 1.1.1958. However, on 26.8.2019, a notification was issued by means of which, the retirement notification of the petitioner was withdrawn on the perception that his date of birth is 1.1.1961 but it was kept in abeyance by a subsequent notification dated 22.1.2020, meaning thereby that the Notification dated 26.9.2019 was never acted upon and for this reason alone, the petitioner approached the Tribunal to assail the Notification dated 22.1.2020, but his service appeal was dismissed after dilating upon all legal and factual aspects of the case.

7. One more important facet that cannot be lost sight of is a reference to CPLA No.135 of 2018, brought to light in the Notification dated 29.07.2020 which was filed by the petitioner in this Court to challenge the High Court order wherein he acknowledged and self-proclaimed that his date of retirement is 31.12.2017. When we found the reference of CPLA No.135 of 2018, in order to verify this piece of information, we checked the memo of appeal and detected that in paragraph 6, the petitioner himself mentioned that he will retire from service on 31.12.2017, which is the same date of superannuation mentioned in his notification of retirement. Article 114 of the Qanun-e-Shahadat Order, 1984, defines the doctrine of estoppel. If a person by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief then he is not allowed in any suit or proceeding to deny the truth of that thing. In fact this principle is established on equity and fair-mindedness with the sole intention to nip in the bud the element of fraud and deception in order to ensure justice. Whereas the doctrine of acquiescence is also germane to the conduct and what is more, the doctrine of approbation and reprobation are also applicable in the present set of circumstances of the case, wherein the petitioner himself elected and disclosed his correct date of birth in the earlier CPLA filed in this Court therefore, at this stage he cannot contradict or belie his correct date of birth and cannot be allowed to resile from his own admission.

8. The main contention of the petitioner was that under Rule 12-A of the Sindh Civil Servants (Appointments, Promotion and Transfer) Rules 1974, the date of birth once recorded by a civil servant at the time of joining Government service shall be final and no alteration shall be permissible and the age mentioned in the service book shall be given preference. There is no disbelief or reservation to the niceties of the aforesaid Rule but, the other way round, this Rule does not prohibit or restrain the competent authority from inquiring into cases where, on the face of it, certain interpolations are made by the Civil Servant in the service book, or where he provided wrong date in the service record. In such a case, obviously, the correction may be made after due satisfaction and inquiry and each case has to be decided on its own facts and circumstances. In the case in hand, the actual date of birth of the petitioner has been verified and proved beyond any reasonable doubt and after due diligence and satisfaction, the competent authority has taken the decision which was affirmed by the Tribunal. The petitioner cannot plead that by all means, the wrong entry made in the service book should be treated sacrosanct or as gospel truth which could not be rectified in any circumstances, despite being found and proved to be incorrect, deceitful and or interpolated.

9. As the result of the above discussion, no case for interference is made out. The petition is dismissed and leave is refused.

Judge

Judge

Judge

Islamabad the
27th September, 2022
Khalid
Approved for reporting