BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, (Camp Court, D.I.Khan)

Appeal No. 1169/2018

Date of Institution ... 18.09.2018

Date of Decision ... 23.01.2019

Alamdar Hussain son of Kazim Hussain R/O Mithapur Kalan Tehsil Paharpur, presently Madina Colony, D.I.Khan, Sub Engineer, Flood Irrigation Division, D.I.Khan. (Appellant)

VERSUS

The Secretary Irrigation, Government of Khyber Pakhtunkhwa, Peshawar and three others. ... (Respondents)

Present.

MR. MUHAMMAD ALAMZEB QURESHI, Advocate.

For appellant

MR. HAMID FAROOQ DURRANI,

CHAIRMAN

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

The case of appellant, as reflected in the memorandum of appeal, is that he was appointed in the respondent department and was performing duty as Sub Engineer in the Irrigation Department. His actual date of birth was 15.04.1961 according to Primary School as well as Middle School certificates. The said date was, however, wrongly recorded as 15.04.1959,

at the time of appointment of appellant, in his service book. For requisite correction the appellant brought a Civil Suit before the Senior Civil Judge, D.I.Khan on 19.02.2018. The said Suit was subsequently returned under Order-7 Rule 10 CPC to the appellant on 22.3.2018. It was noted in the order that the court lacked jurisdiction to proceed in the matter. The appeal in hand was, therefore, filed.

2. I have heard learned counsel for the appellant and have gone through the available record.

The admitted facts are that the appellant was inducted in service on 24.06.1981 and his date of birth was entered in his service book as 15.04.1959. It was also admitted at the bar that the CNIC of appellant also contained his date of birth as noted in the service book. It is apparent on record that the appellant, ever-since, his appointment did not care to have the service book amended to the extent of alleged wrong incorporation of date of birth for 37 long years and then turned up by filing the Civil Suit in the year 2014. Prima-facie, the effort of appellant was towards gaining three more years in service, that too, at the fag end of his career as a civil servant. Such exercise has been condemned and disallowed through a plethora of judgments passed by the Apex Court including 2014-SCMR-1723.

It was also admitted that the matriculation certificate of appellant also contained his year of birth as 1959. The same is an authentic evidence .

regarding correctness of entry in service book of appellant. Needless to

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note that after rejection of his Suit the appellant did not try to have the requisite alteration made in his CNIC as well as matriculation certificate before the other fora.

3. In view of the above, the appeal in hand is devoid of merits warranting its admission for regular hearing. The same is, therefore, dismissed in limine.

File be consigned to the record room.

(HAMID FAROOQ DURRANI) CHAIRMAN (Camp court, D.I.Khan)

<u>ANNOUNCED</u> 23.01.2019

Form- A

FORM OF ORDER SHEET

Court of					
Case No	:		1169 /20	18	

	Case No	1169 /2018
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/09/2018	The appeal of Mr. Alamdar Husssain received today by post through Mr. Muhammad Alamzeb Qureshi Advocate may be entered
		in the Institution Register and put up to the Worthy Chairman for
		proper order please.
2-		REGISTRAR - 12 9 This case is entrusted to touring S. Bench at D.I.Khan for
		preliminary hearing to be put up there on 28.12 - 2014
•		CHAIRMAN
28.12	2.2018	Neither appellant nor his counsel present therefore, notice
		be issued to appellant and his counsel for attendance ar
		preliminary hearing for 23.01.2019 before S.B at Camp Cou
		D.I.Khan.
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		Camp Court D.I. Khan
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BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 169 /2018

Alamadar Hussain

VERSUS

The Secretary Irrigation etc

INDEX

S.NO	<u>PARTICULARS</u>	ANNEXURE	PAGE NO.
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2	Copy of School certificate of the appellant	"A"	4-5
3	Copy of service book	"B"	0-6
4	Copy of civil suit along with judgment.	"C & D"	7-16
5	Copy of appeal along with postal receipts.	"E & F"	17-19
6	Vakalatnama		0 20

Your Humble Appellant

Alamdar Hussain Through counsel

Dated:1/09/2018

MUHAMMAD ALAMZEB QURESHI

Advocate High Court Dera Ismail Khan.

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR. CAMP COURT D. J. KHAN.

Service Appeal No. 169 /2018

Alamdar Hussain S/o Kazim Hussain Caste Baloch R/o Mithapur Kalan, Tehsil Paharpur, Presently Madina Colony, Tehsil & District Dera Ismail Khan, Sub-Engineer, Flood Irrigation Division, Dera Ismail Khan.

Mob- 03459827616

.....(Appellant) Pakhtukhwa

VERSUS

1. The Secretary Irrigation, Government of Khyber Pakhtunkhwa, Peshawar.

2. The XEN, Irrigation Department, Flood Division, Dera Ismail Khan.

3. Superintending Engineer, Irrigation Department, District Dera Ismail Khan.

4. District Account Officer, District Dera Ismail Khan.

.....(Respondents)

Sold

SERVICE APPEAL UNDER SECTION OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1972 AGAINST WRONG ENTRY OF APPELLANT DATE OF BIRTH I.E 15/04/1959 IN SERVICE BOOK / SERVICE RECORD.

Prayer:-

Registrate.

TO PLEASE TAKE COGNIZANCE OF THE CASE AND WHILE ACCEPTING THE INSTANT APPEAL THIS HONOURABLE TRIBUNAL MAY BE PLEASED TO DIRECT THE RESPONDENTS AUTHORITY TO CORRECT THE DATE OF BIRTH IN SERVICE WHICH WAS WRONGLY ENTERED AS 15/04/1959, BUT CORRECT DATE OF BIRTH OF APPELLANT IS 15/04/1961.

Respectfully Sheweth:-

The appellant submits as under:-

<u>1-</u> That the addresses of the parties as given in the heading of the appeal are correct and sufficient for the purpose of service.

- **2-** That the appeal is within time.
- <u>3-</u> That the appellant has been appointed as Sub-Engineer in Irrigation Office, Dera Ismail Khan.
- 4- That actual date of birth of appellant is 15/04/1961 according to primary School as well as middle school certificates record. Copy of the certificates are enclosed as *Annexure "A"*.
- 5- That at the time of appointment of appellant, in service record wrong date of birth i.e 15/04/1959 was recorded. Copy of service book is enclosed as Annexure "B".
- 6- That appellant is Government servant and is serving under the respondents authority. Therefore, the respondents authority are competent and have authority to correct the date of birth of appellant which is 15/04/1961, but wrongly entered as 15/04/1959.
- 7- That the appellant is deprived from his wrong entry of Date of Birth in service record and the appellant aggrieved from the same, approach this Honourable Court through instant appeal, inter alia, on the following grounds:-
- **8** That the appellant has served the Department for a long period and has a spotless and unblemished record of service at his credit.
- **9-** That due to these untimely & frequent wrong entry of Date of Birth not only the life of the appellant is disturbed but the appellant promotion & pensionary benefits are also disturbed as well.
- <u>10-</u> That applicant was field civil suit which was dismissed with the direction that to approach the Service Tribunal. Copy of plaint and order are enclosed as <u>Annexure "C & D".</u>
- That the appellant having been aggrieved of the attitude of the respondents submitted his Departmental appeal to respondent No.1 on 28/05/2018 for the redressal of legitimate rights. But respondent No. 1 have not passed any yet order under due time. Copy of department appeal

and postal receipt are enclosed are Annexure "E &

That having no other alternate remedy available to 12the appellant except to approach this Honourable Tribunal on inter alia the following grounds:-

GROUNDS:-

d)

That the impugned / wrong entry of Date of Birth a) i.e 15/04/1959 is against the law, facts and ineffective upon the rights of appellant.

That the appellant is fully entitled for correction of <u>b)</u> " date of record (i.e correct service 15/04/1961) but appellant is illegal deprived from his due rights.

That the appellant has been hit by the doctrine of <u>c)</u> likes & dislikes.

> That counsel for the appellant may kindly be allowed to raise additional grounds during the course of arguments.

It is, therefore, humbly requested that while accepting the instant appeal this Honourable Tribunal may be pleased to direct the respondents authority to correct the date of birth of the appellant in service which was wrongly entered as 15/04/1959, but correct date of birth of appellant is 15/04/1961 in the ends of justice and equity.

Your Humble Appellant

Alamdar Hussain Through counsel

Dated:/7/09/2018

MUHAMMAD ALAMZEB OURESHI

Advocate High Court Dera Ismail Khan.

AFFIDAVIT:

I, Alamdar Hussain S/o Kazim Hussain Caste Baloch R/o Mithapur Kalan, Tehsil Paharpur, Presently Madina Colony, Tehsil & District Dera Ismail Khan, Sub-Engineer, Flood Irrigation Division, Dera Ismail Khan, the petitioner, do hereby solemnly affirmed declare on oath that the contents of this service appeal are true & correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

2016 لم منافد رغیرنگورسد in the second of the first رید اجتراط درسے کی رقیس جواس کے ذمہ داجت الادائتین اداکر دی میں افوات مائے مندم الامر مر مرسمطابق Larles by Julianiles بررها في كاختمام بيجيوري مين للكي تما . مفامين عس ملاسي علم ميل موا اس كالمتحان ترفئ ويف ك ك -ان طلباری مورث میں ج خدرسے بواسع دی گئ ى صدى منزه برتمانى كانتا تقديق كياماً به يمكي مندم ذيل انداج اس مدسه يك جيشون اوران سأرينكيلون كمعلابي مين بيرجاس في ان مدسول معلمل ك بيد جهال استعليى سال مير اس سے بيلے تعليم بارئ سے سال دروش منزی که معزای متنی سال سافران متنی کی رضت جسیل يرمرن فن من مدين في العاقع مرسين لائن وال ہونے کی ماریخ كولي ورمريس جماعت 31-03720/10/ ور الول كي مور مير مرف سكالرشب ياني والول كي مور مير 24-02-016171616 سارشب کی مقدار کس ایخ برب واکیاکیا -قسم *سكا ليسب* كس سال معانا برا -رضت جربك درس ليكا ب فوط ؛ عام طور پدرستھوڑنے کے سرمنے کی لئے درخوات مرسے منبی ہر نے کے ایک ما م کے اندر ہو لی جا بھرت موت، ما مسور پردرسیورے سے مسرتیدیت سے سته درجواست مدرسے ہی ہو ہے ہے ، ہوت الدرہ وی جانے ، ہوت ان ماہ سے الدرہ وی جانے ، ہوت ان طلباء کے حبنوں نے بلوگ استان ویا ہو ایک ماہ تیں ہے کانا جائے ، ان طلباء کے حبنوں نے بلوگ کا استان ویا ہو ایک ماہ تیں ہے کہ لئے موازی آخرانے فیس جا رہے ہم کی . ان طلباء کے حبنہ ماہ کے میں موازی آخرانے کی ایک جانے وہ کے جانے وہ کی کے ایک مرتبہ کے لئے موازی آخرانے وہ کے جانے وہ کی جانے وہ کی مرتبہ کے لئے دورے مرتبہ کے لئے دورے کی مرتبہ کے لئے دورے مرتبہ کے لئے دورے مرتبہ کے لئے دورے مرتبہ کے لئے دورے کی مرتبہ کے لئے دورے کی ایک کے لئے دورے کی مرتبہ کے دورے کے دورے کی مرتبہ کے دورے کی مرتبہ کے دورے کی دورے کی دورے کی مرتبہ کے دورے کی دورے تعدین کیاجا ہے۔



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IN THE COURT OF ARSHAD ALI CIVIL JUDGE

Suit NO. 139/1 of 2018

Alamdar Hussain Vs Board etc

Plaintiff alongwith learned counsel Mr. Muhammad Alamzaib Qureshi advocate present. Defendants No. 3 to 6 through SDO Flood sub division No. 01 D.I.Khan and learned District attorney present. Authority letter on behalf of defendants No. 03 to 05, brief facts of the defendants record and attested copy of service book of the plaintiff placed on file.

- Brief facts of the case are that, that plaintiff has filed instant suit for declaration and permanent injunction regarding correction of his date of birth in his educational and service record (in record of defendants). It is alleged in the plaint that correct date of birth of the plaintiff is 15.04.1961 but defendant No. 1 wrongly incorporated the same as 15.04.1959 in his SSC certificate, which alleged wrong entry has been repeated by the defendants No. 4 to 6 in his service record, although in primary and middle school certificates of the plaintiff, his date of birth was correctly incorporated as 15.04.1961. That the defendants were requested time and again to rectify his date of birth but to no avail.
- During the course of arguments the learned counsel for the plaintiff 3. narrated the same story as the plaintiff averred in his plaint and supported his stance on case law reported in 1997 PLC (CS) 1122.

Arguments on maintainability/jurisdiction heard and record perused.

pe true

Hence, the suit.

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(12)

The perusal of record reveals that plaintiff is government/civil servant in Irrigation department and currently he is possessing the designation of Sub Engineer, Flood Irrigation Division-I, D.I.Khan, which fact has been admitted by the plaintiff in Para-III of the plaint. Now the question arises that whether in such like situation a civil court has got jurisdiction?

- Keeping in view, the valuable arguments of the learned counsel for the plaintiff and case law referred by him i.e. 1997 PLC (CS) 1122 as well as the prevailing law for the time being enforce, would be carefully discussed, in order to determine the controversy in hand.
- 7. The perusal of case law referred by learned counsel for the plaintiff reveals that the case was decided by the Hon'able Karachi High Court on 03.04.1997, wherein the Hon'able Karachi High Court observed that matter relating to correction of date of birth of civil servant would not come within definition of terms and condition of service, therefore, civil court being court of ultimate jurisdiction could entertain such suit. Relevant citation of the judgment of the Hon'able Karachi High Court may humbly be reproduced as under:-

"(b) Civil Procedure Code (V of 1908)---

Jurisdiction of Civil Court in matter relating correction of date of birth of civil servant ---Effect of Art. 212 of the Constitution--
Dispute relating to entry in service record would not come within definition of terms and conditions of service, therefore, Civil Court being Court of ultimate jurisdiction could entertain such suit----Legal arminer remedy for aggrieved person should be certain and known so that he arminer

could approach correct forum--- Where Department concerned did not correct entry relating to date of birth and plaintiff had relevant documents to show that his date of birth was wrongly recorded in his service book, Civil Court would have jurisdiction to entertain suit for correction of date of birth and to grant status quo in such matter---None of conditions provided in S.115, CPC being attracted, no interference was warrant in revisional jurisdiction".

From perusal of ibid case law, it is evident that the respondent/plaintiff claimed his actual and correct date of birth as 09.01.1938, which was also incorporated in his service book i.e. 09.01.1938 and he only claimed rectification in his gradation list prepared by CBR, which means that his date of birth was correctly incorporated in his service record/service book but in the instant case plaintiff is seeking rectification of his date of birth in his educational as well as service record including service book. Moreover, after pronouncement of the ibid case law in 1998 a new provision of 12-A was added vide Estt. Division Notification No. SRO 970 (i)/98 dated 09.09.1998 in the Civil Servants (Appointment, Promotion and Transfer) Rules 1973, which may be reproduced for ready reference as under:-

[12-A. Alteration in the date of birth.—The date of birth once recording 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.

Although the ibid section of law is too much clear and the instant suit in the light of ibid section of law is not maintainable but the court confined

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8.

ON THE WAY

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Hon able Peshawar High Court held in a case titled "Provincial Police Officers (IGP) Peshawar and another Vs Fariduallah Khan" reported in 2013 PLC (CS) 1413, that alteration of date of birth in service record of a person not only affect the pay and pension of that person but also the rights of promotion of other Civil Servants which are matters relating to terms and condition of service falling within jurisdiction of Service Tribunal. Relevant citation of the judgment of the Hon'able Peshawar High Court Peshawar may respectfully be reproduced as under:-

"(b) Khyber Pakhtunkhwa Service Tribunal Act (1 of 1974)---S.3(2)--Khyber Pakhtunkhwa Civil Servants Act (XVIII of 1973), S.8--Constitutions of Pakistan, Art.212(3)---Correction of date of birth in
seniority list of civil servant---Terms and conditions of service--scope---Suit filed by plaintiff/civil servant for correction of date of
birth in seniority list of government department was decreed by civil
court---Appellate court dismissed the appeal of defendant---plaintiff
contended that correction of date of birth in seniority list did not fall
under terms and conditions of service----Validity----Ensuing effect of
correction of date of birth would not only be an extension in the
service of the plaintiff in his department but it would also have an
effect on his pay and pension and also lead to deprive other civil
servants of their rights of promotion which were matters relating to

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Service Tribunal---Judgment and decree passed by civil court was set aside---Revision petition was accepted".

Now the question arises that which of the above referred judgments/case law i.e. 1997 PLC (CS) 1122 and 2013 PLC (CS) 1413 would be given preference. To answer this query, relevant citation of case law reported in 1983 CLC page 2382 Karachi High Court would be reproduced for ready reference:-

Art. 201---Contrary view of two High Court on one point-High Court's decisions binding on its subordinate courts which should give preference to same to decision of other High Courts-Such decisions, held, can only yield to decision of Supreme Court (preemption).

11. Hence, it is settled that in case of controversy view of two High Courts on one point the decision of our own High Court is to be followed irrespective of the chronological consideration. Even otherwise, it is a well settled law that where conflicting views of different High Courts arises, other than own High Court, preference would be given to case, which is latest one.

From the above discussion, we can confidently hold that alteration in date of birth of a person in his service record as per judgment of august Peshawar High Court Peshawar discussed above, fall within the ambit of terms and condition of his service and in such like situation civil court lacks jurisdiction within the meaning of Art. 212 of the Constitution of Pakistan 1973.

(16)

13. Resultantly, for the reasons hereinabove discussed, without touching the merit of the case, the plaint is hereby returned alongwith its original annexure to the plaintiff under Order 7 Rule 10 CPC, having no jurisdiction with this court to proceed the case in hand. The plaintiff, if so advised, may approach the proper forum for redressal of his grievance subject to the law of limitation. Cost to follow the events.

14. Attested copies of the file be consigned to Record Room.

ANNOUNCED
22/03/2018
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ARSHAD ALI \
Civil Judge-II, D.I.Khan

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Anex E (17)

The Secretary,
Irrigation Department,
Khyber Pakhtunkhwa, Peshavar.

THROUGH:

PROPER CHAP NEL.

SUBJECT:

DEPARTMENTAL APPEAL TO CORRECT THE DATE
OF BIRTH IN SERVICE RECORD WHICH WAS
WRONGLY ENTERED AS 15/04/1959, BUT
CORRECT DATE OF BIRTH IS 5/04/1961.

Respected Sir,

- That the appellant has been appointed as Sub-Engineer in Irrigation Office, Dera Ismail Khan.
- 7. That actual date of birth of appellant is 15/04/1961 according to primary as well as middle school certificates record. Copy of the certificates are enclosed as <u>Ar nexure "A".</u>
- That at the time of appointment, in service record wrong date of birth i.e 15/04/1959 was recorded. Copy of service book is enclosed as <u>Annexure</u>"B".
- That appellant is Government servant and is serving under your kind control. Therefore, you Honour are competent and have authority to correct the date of birth of appellant which is 15/04/1961, but wrongly entered as 15/04/1959.
- That the appellant is deprive I from his wrong entry of Date of Birth in service record and the appellant aggrieved from the same, approach your honourable Office the Light the instant appeal, inter all, on the following grounds:

GROUNDS:-

A.

That the impugned / wrong entry of Date of Birth i.e 15/04/1959 is against he law, facts and ineffective upon the rights of appellant.

В.

That the appellant is fully entitled for correction of service record (i.e correct date of birth 15/04/1961) but appellant is illegal deprived from his due right.

C,

That the appellant may kindly be given personal hearing or through counsel and may kindly be allowed to raise additional grounds at the time of hearing.

It is, therefore, humbly prayed that the correct date of birth 15/04/1961 be entered and correct in the whole service record instead of 15/04/1959.

Your Humble Appellant

Dated 105/2018

Alamda · Hussain Sub-Engineer

Flood Irri jation Division, Dera Ism ill Khan.

