

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

APPEAL NO. 470/2022.

MR. MUHAMMAD IQBAL EX-TUBE WELL OPERATOR

VERSUS

IRRIGATION DEPARTMENT

INDEX

S.#	Documents	Annexure	PAGE
1	Jawab Dawa	I	1-4
2	Non adjudication of appeal in the Court of Civil Judge-IV Swabi	II	5
3	Dismissal of appeal by District Judge & Session Judge-IV Swabi	III	6-8
4	Signature of appellant on pension papers	IV	9
5	NIC	V	10
6	Pay slip	VI	11
7	Service Book page-1 & 2	VII	12-13

8 Power of Attorney

14

  
**EXECUTIVE ENGINEER**  
Swabi Irrigation Division-1  
Swabi

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA**  
**PESHAWR**

Appeal No. 470/2022.

Mr. Muhammad Iqbal EX-Tube Well Operator

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 6182

Dated 26/6/2023

(Appellant)

**VERSUS**

Executive Engineer,  
Swabi Irrigation Division-I Swabi and others

Respondents

Subject:

**JOINT PARAWISE COMMENTS ON**  
**BEHALF OF RESPONDENTS NO. 1 & 3**

Respectfully Sheweith:

**Preliminary objection**

- 1) That the appellant has no cause of action and locus standi to file the appeal
- 2) That the appellant has not come to the Service Tribunal with clean hands.
- 3) That the appellant has been estopped by his own conduct to file the appeal.
- 4) That this appeal is not maintainable in its present form.
- 5) That the appellant has concealed the material facts.
- 6) That the appeal is bad for Mis-joinder and Non-joinder of necessary parties.
- 7) That this Honourable Tribunal has no jurisdiction to entertain the appeal.

**FACTS**

1. Pertained to Record.
2. Pertained to Record.
3. Pertained to Record.
4. Pertained to Record.
5. No comments as the entry of date of birth of a Govt: servant in the pay slip is the responsibility of District Accounts Office.
6. Since the introduction of mechanized system, the Departmental action for retirement of a Govt: servant is subject of entry of date of birth in the pay slip through system (Computer).
7. No comments
8. As per para-6 above and the Department has initiated the retirement process as a result of pay slip generated through system.
9. The appellant has got no cause of action to file instant appeal.

**GROUND**

- A) Incorrect, the retirement of the appellant is based on pay roll generated through system. It was also obligatory on the part of appellant to pin point the correction in the date of birth since first entry of appointment, in which the appellant has failed.
- B) Incorrect, no rules have been violated keeping in view the elaboration made as per item No.(6) above under FACTS
- C) Incorrect, there is no matter of arbitrary or malafide manner as after dismissal of his appeal by the District Court Swabi, Mr. Muhammad Iqbal visited this office for processing of his pension case and accordingly Mr. Muhammad Iqbal signed his pension papers as a token being agreed to proceed on pension.
- D) As elaborated at para-6 under FACT above and the Department has no role to play in the retirement of the Govt: servant and all the action toward retirement is based on computer generated pay slips in the District Accounts Office.

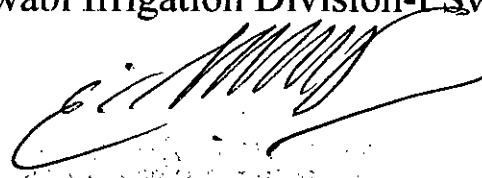
E) As per para-D above.

F) The respondents seek leave to raise additional grounds at the time of arguments.

It is, requested that the appeal may be dismissed in the court.

Respondents

  
Executive Engineer,  
Swabi Irrigation Division-I Swabi

  
Superintending Engineer,  
Swabi Irrigation Circle Swabi

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA**  
**PESHAWR**

Appeal No. 470/2022.

**Mr. Muhammad Iqbal EX-Tube Well Operator**

**(Appellant)**

**VERSUS**

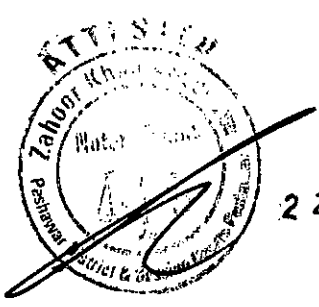
Executive Engineer,  
Swabi Irrigation Division-I Swabi and others

**Respondents**

**COUNTER AFFIDAVT**

We do hereby solemnly affirm and declare that contents of the para wise comments given by this Department in appeal No. 470/2022 filed by Mr. Muhammad Iqbal Ex-Tube Operator are correct to the best of our knowledge and nothing has been concealed from august Tribunal/court

*It further stated on oath in this appeal the answers of respondents have neither been placed ex-parte nor their defense has been struck off* Deponents



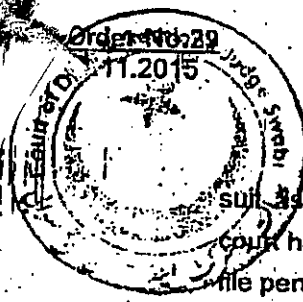
*[Signature]*  
**EXECUTIVE ENGINEER**  
**Swabi Irrigation Division-I**  
**Swabi**

22 JUN 2022

*Alleged*  
*[Signature]*  
**EXECUTIVE ENGINEER**  
**Swabi Irrigation Division-I**  
**Swabi**

Handwritten notes at the top of the page, including "XBN" and other illegible text.

27/A  
Page 5  
ANNEX-II H/1



Parties present.

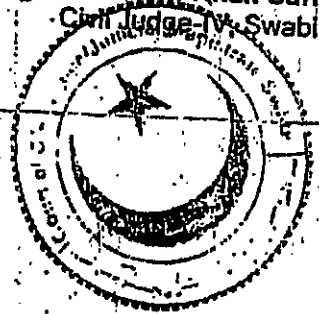
My this order is directed to decide point of maintainability of suit as agitated by defendants in their written statement that civil court has got no jurisdiction, so on this point arguments heard, case file perused.

Perusal of file shows that admittedly plaintiff is serving as operator in irrigation department wherein, his date of birth has been recorded as 01-10-1957 in service book, ID card and Medical Certificate etc but in his pay slip, date of birth is recorded as 01-01-1954, so fact of the matter is that plaintiff intended to seek, right of declaration etc to get the requisite correction in line with the entries of his service record and not contrary to that but the Learned counsel for defendant argued that question is not about merit or demerit of the case, but it is related to the very jurisdiction of court so he relied upon 2004-PLC(C.S)-1162 and 2003-SCMR-444, wherein highlighted that suit by civil servant for correction of date of birth is not maintainable before civil court in view of bar contained in Article 212 of the constitution, and it is essential terms of condition of service.

So in view of above it appears that since correction of date of birth of civil servant is involved in the present controversy, and it being essential terms of condition of service already provides that matter can not be adjudicated upon before civil court in view of bar contained under Article 212 of the constitution of Pakistan, and thus civil court has got no jurisdiction to adjudicate upon the subject matter of suit. Point of jurisdiction is accordingly resolved, plaint is returned to the plaintiff to present the same before proper forum if so advised, Muhamir to do the needful and the remaining record be consigned to record room. No order as to cost.

Announced  
11<sup>th</sup> November 2015

(Abdul Salam Khan Sarkani)  
Civil Judge-IV Swabi



RECEIVED  
Examiner Copying Deptt  
Sessions Court Swabi

RECEIVED

Handwritten notes on the right margin, including "53/1" and other illegible text.

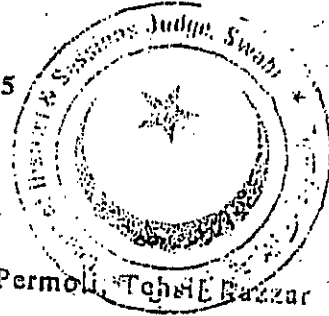
31

Ann-III

P-6

**IN THE COURT OF MALIK AMJAD RAHIM,  
ADDITIONAL DISTRICT & SESSIONS JUDGE-IV,  
SWABI.**

Civil Appeal No. 38/13 of 2015  
Date of Institution: 16.11.2015  
Date of Decision: 13.06.2016



Muhammad Iqbal S/O Abdul Hakim r/o Village Permol, Tehsil Bazzar  
District Swabi ..... (Appellant)

**VERSUS**

Executive Engineer Irrigation, Swabi & 02 others..... (Respondents)

**CIVIL APPEAL AGAINST THE ORDER/JUDGMENT DATED 11.11.2015  
OF THE LEARNED CIVIL JUDGE-IV, SWABI.**

**JUDGEMENT:**

This civil appeal lies against the order/judgment of the learned Civil Judge-IV, Swabi, dated 11.11.2015, whereby suit of the appellant/plaintiff was returned to the appellant/plaintiff by holding that the Civil Court has got no jurisdiction to adjudicate upon the subject matter of the suit. The appellant/plaintiff feeling aggrieved of the said order/judgment, hence, has brought the instant civil appeal.

*Mr.*

Brief facts of the matter in hand are that, the appellant/plaintiff brought a civil suit against the respondents/defendants for declaration to the effect, that his correct date of birth is 01.10.1957, which is correctly entered in his School certificate, service book, CNIC and in medical certificate, but the respondents/defendants during preparing of his pay-slip, have wrongly entered the same as 01.01.1954, which is wrong; illegal, against law and facts; therefore, same is not maintainable and liable to correction. In prayer-II of the plaint, appellant/plaintiff opted for permanent mandatory injunction, by requesting that, the respondents/defendants be bound to correct his date of birth in their record and they shall be restrained from blocking his salary on the basis of alleged wrong entry.

**ATTESTED**  
*BP-6-16*  
Examiner Copying Deptt:  
Sessions Court Swabi

~~ATTESTED~~

Respondents/defendants were summoned, who through their representative attended the court and resisted suit of the appellant/plaintiff by submitting their written statement.

After submission of written statement, from the divergent pleadings of the parties issues were framed and the case was fixed for evidence of appellant/plaintiff. During proceedings of the suit, on 18.09.2015, when the statement of PW-1 was recorded, the respondents/defendants questioned the maintainability of the suit and thereafter the case was fixed for arguments on the question of maintainability. After hearing arguments on maintainability, the learned trial court through the impugned order/judgment dated 11.11.2015, resolved the question of maintainability of the suit, and it was held that as the civil court has got no jurisdiction to adjudicate upon the subject matter of the suit, therefore, the plaint was returned to the appellant/plaintiff with the direction to present the same before proper forum, if so advised. Hence, the said order/judgment is now impugned before this court through the instant appeal.

Respondents were summoned, who through their representative attended this court and contested the instant civil appeal.

MR

Arguments heard and file perused.

It is admitted fact from the record on file, that the appellant/plaintiff is a government servant and the correction of his date of birth in pay slip and its subsequent consequential matter relates to terms and conditions of the service, which falls within the jurisdiction of Service Tribunal and not the civil court. IN this regard reliance is placed on case laws 2004 P L C 1162 and 2003 SCMR 444.

Moreover, the appellant/plaintiff has taken the plea, that in his service record and medical certificate his date of birth is 01.10.1957, but in his pay slip it is wrongly mentioned as 01.01.1954. The service book EX PW 1/1, page-4 reveals, that the appellant/plaintiff has been appointed as Tube Well operator vide XEN office order NO. E/W-1-1498 dated 20.09.1974. The service book entry of the appellant/plaintiff

AT  
192-080  
[Signature]  
[Stamp]

ATTESTED



33

Ann-II  
page 8

reveals, that the appellant/plaintiff has joined his service on 20.09.1974, as Tube Well Operator. Now, if we take into consideration, the alleged date of birth of the appellant/plaintiff as 01.10.1957, as claimed by him in the plaint and the date of his appointment as 20.09.1974, one can come to the conclusion, that at the time of joining service, his age was about 17-years which is the age of minority.

Under the law, a minor having less than 18-years age, cannot join a government service and legally no age relaxation is permitted, however, for an over age person, the competent authority has the power to permit age relaxation.

So keeping in view, the date of joining the government service on 20.09.1974, the court cannot legalize the alleged date of birth as 01.10.1957, which is entered in his service book.

The learned trial court has rightly returned the plaint to the appellant/plaintiff and there is no need of interference of this court, hence, it is maintained and the appeal is dismissed. Parties are left to bear their own costs.

File be consigned to record room after its compilation and necessary completion.

ANNOUNCED:  
13.06.2016

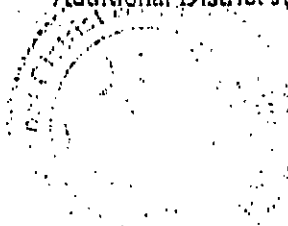
*AR*  
MALIK AMJAD RAHIM,  
Additional District Judge-IV Swabi

CERTIFICATE

Certified that this judgment consists of (03) pages. Each page has been read, checked, correct wherever necessary and signed by me.

*AR*  
MALIK AMJAD RAHIM,  
Additional District Judge-IV-Swabi

RECORDED  
*13-6-16*  
Dist. Swabi



Dist. Swabi  
*13-6-16*

77 1 4  
13-6-16  
17-6-16  
17-6-16  
f. 4 8  
*AR*

~~ATTESTED~~

## PART - I

(To be filed in and signed by the applicant himself/herself)

THE EXECUTIVE ENGINEER  
SWABI IRRIGATION DIVISION-I  
SWABI.

I have retired

I have the honour to say that I have been permitted to retire from service

I am due to retire

on (date) 21/10/2015.

I therefore request that pension/gratuity admissible under the rules may kindly be sanctioned to me

I declare that I have neither applied for nor received any pension or gratuity for any portion of this service, nor shall I submit any application hereafter without quoting a reference to the application and to the order which may be passed on

3 Should the amount of the pension and / or gratuity granted to me be afterwards found to be in excess of that to which I am entitled under the rules, I hereby undertake to refund any such excess

4 I wish to drawdo not wish to draw gratuity in lieu of one fourth of my pension

5 I wish to commute my pension to the extent of Rs. 3106.60 35%

6 I wish to draw my pension from the District Accounts Office/Treasury/Sub Treasury/ National Bank of Pakistan Branch at SWABI

(place)

7 The following documents, duly attested, are enclosed:

- (a) Three specimen signature of mine/two sets of my thumb and finger impression on the prescribed form
- (b) Three photographs of mine.

Your Obedient Servant,



Signature..... MUHAMMAD IQBAL  
S/O ..... MR: ABDUL HAKEEM  
W/O ..... --  
D/O ..... --  
Post held on the date PUMP OPERATOR  
of retirement..... BPS- 05

\* Delete in applicable alternative.

ANNEX D

حکومت پاکستان

16202-5550342-3

19

01/10/1987

~~SECRET~~

TT6740P 16202-5550342-3

سیدتیڈ ایڈووکیٹس، پرائیویٹ لمیٹڈ

سیدتیڈ ایڈووکیٹس، پرائیویٹ لمیٹڈ

31/03/2018 16/04/2008

محمد رفیق



5709005



GOVERNMENT OF PAKISTAN  
SECRETARIAT GENERAL KHAYBER PAKHTUNKHWA  
Karachi

ANNEX F

21

SN 13740

PAIDMENT OFFICE  
P Sec: G02 Month: December 2013  
SU4253 - Executive Engineer Swabi I  
Ptn: Application  
NTN: 0  
GPF #: IRRMR001414  
Old #: 13057049037

Pers No: 00229721 Buckle:  
Name: MUHAMMAD IQBAL  
Gsg: OPERATOR  
CNIC No. 13057049037

GPF Interest Applied  
GPF 05 Active Permanent

DEPTT CODE SU4253

PAYS AND ALLOWANCES:		
0001-Basic Pay		18,690.00
1000-House Rent Allowance		1,002.00
1210-Convey Allowance 2005		1,240.00
1300-Medical Allowance		1,000.00
1348-Adhoc Allowance 2010@ 50%		3,070.00
1970-Adhoc Relief Allow 2011		1,101.00
2110-Adhoc Relief Allow (2012)		2,574.00
2148-15% Adhoc Relief All-2013		1,702.00
<b>Grass Pay and Allowances</b>		<b>25,731.00</b>
DEDUCTIONS:		
GPF Balance 129,244.09	Subst:	45.00
3501-Benevolent Fund		100.00
3511-Addl Group Insurance		7.00
3604-Group Insurance		67.00
<b>Total Deductions</b>		<b>219.00</b>
<b>NET AMOUNT PAYABLE</b>		<b>25,512.00</b>

QUALIFYING SERVICE

O.D.B  
01/01/1954

LFP Quota:  
MSP, TURKLANDAI BRANCYORLANDAI BRANCH S/

37 Years OS Normal O.D.B

RECEIVED

ANNEX A

(5)

A.M. 11

P. 12

	Whether substantive or officiating and whether permanent or temporary	If officiating state— (i) substantive appointment or (ii) whether service counts for pension under Art. 37, C. S. R.	Pay is substantive post	Additional pay for officiating	Other emoluments falling under the term "Pay"	Date of appointment	Signature of Government servant	Signature and designation of the head of the office or an officer-in-charge, officer-in-charge or officer-in-charge of division
<p>Prat. No. B-5-180</p>	<p>W/C</p>	<p>Rs. 120/-</p>	<p>Appointed as a T.M. operator at Marraji at the rate of Rs. 120/- in the N.P.S. NOL-3 vide XEN office order No. W-1/1998 dt 20.9.94. It reported on the same date.</p>	<p>EXECUTIVE ENGINEER Tubewell Cons WARDA</p>			<p>Signature of Government servant</p>	<p>Signature and designation of the head of the office or an officer-in-charge, officer-in-charge or officer-in-charge of division</p>
<p>do</p>	<p>do</p>	<p>Rs. 123/-</p>	<p>Granted Annual Increment</p>	<p>Rs. 123/-</p>			<p>Signature of Government servant</p>	<p>Signature and designation of the head of the office or an officer-in-charge, officer-in-charge or officer-in-charge of division</p>
<p>do</p>	<p>do</p>	<p>Rs. 126/-</p>	<p>do</p>	<p>Rs. 126/-</p>		<p>1/12/76</p>	<p>Signature of Government servant</p>	<p>Signature and designation of the head of the office or an officer-in-charge, officer-in-charge or officer-in-charge of division</p>
<p>Pump operator 70-7-326/8-39a (NPS-3)</p>	<p>do</p>		<p>Opel for Revised NPS</p>	<p>Rs. 270/-</p>	<p>W.E. 1-5-77, Notification No. A-5/B/Fac/10-136/77 9.16/8/77</p>		<p>Signature of Government servant</p>	<p>Signature and designation of the head of the office or an officer-in-charge, officer-in-charge or officer-in-charge of division</p>

ATTESTED

20.9.94

Note: The entries in this page should be renewed or re-attested at least every five years, and the signature in lines 9 and 10 should be dated.

1. Name - MR. Mohammad gah

2. Race - AFGHAN ✓

3. Residence - Village and P.O. Permal, Tal. Sambar and Dist. Mardan

4. Father's name and residence - Abdul Hakim ✓

5. Date of birth by Christian era as nearly as can be ascertained - 1-12-1957 ✓

6. Exact height by measurement - 5-6

7. Personal marks for identification - A hole on right side of head

8. Left hand thumb and finger impressions of (non-gazetted) officer

Little Finger

Ring Finger

Middle Finger

Fore Finger

Thumb

9. Signature of Government servant

10. Signature and designation of the Head of the Office or other Attesting Officer

EXECUTIVE ENGINEER

Tuberc. O. & M. Division

M.A. B. A. J. P. H. S. M. S. R.

Chugh

~~ATTACHED~~



OFFICE OF THE EXECUTIVE ENGINEER  
SWABI IRRIGATION DIVISION-I SWABI

Ph: & Fax No.0938-530484 E-mail www.swabiirrdivn1@yahoo.com

WORKING PAPER

APPEAL NO. 470/2022.

MR. MUHAMMAD IQBAL EX-TUBE WELL OPERATOR

(APPELLANT)

VERSUS

- |    |   |   |               |
|----|---|---|---------------|
| 1) | Executive Engineer,<br>Swabi Irrigation Division-I Swabi. | ) |               |
|    |   | ) |               |
|    |   | ) |               |
| 2) | Superintending Engineer,<br>Swabi Irrigation Circle Swabi | ) | (Respondents) |
|    |   | ) |               |
|    |   | ) |               |
| 3) | District Accounts Officer<br>District Swabi               | ) |               |
|    |   | ) |               |

Mr. Muhammad Iqbal was appointed as T/Well Operator in the then Swabi Irrigation Division Swabi on 01.07.1978. He was retired from service on 31.12.2013 on attaining the age of superannuation i.e 60 years (retirement order enclosed). However, Muhammad Iqbal Ex Tube Well Operator was of the view that his retirement premature keeping in view his date of birth as 01.01.1954.

On scrutiny of record it revealed that entry of his date of birth in the system was entered by the District Accounts Office as 01.01.1954 instead of 01.01.1957 and as such since introduction of mechanized system of maintaining the service record of Govt: servants, the Deptt: action toward retirement is based on the pay roll generating through system.

Mr. Muhammad Iqbal also lodged an appeal in the Civil Court vide Civil Suit No.53/1 of 2014 in the Court of law against his retirement being premature keeping in view his date of birth. His appeal was not maintained in view of the bar contained under Article 212 of the Constitution of Pakistan and thus Civil Court has got no jurisdiction to adjudicate upon the subject matter of suit.

Against the above decision of Civil Court, Muhammad Iqbal lodged appeal in the District Court Swabi. His appeal was dismissed by the learned District Court Swabi as confiscated at para-7 of the FACTs and he was considered retired.

After dismissal of his appeal his pension case was processed and to this affect he has signed all the pension related deeds (copy enclosed).

Therefore it is humbly prayed that the instant appeal may be please dismissed with cost.




BEFORE THE HONOURABLE SERVICE TRIBUNAL PESHAWAR

APPEAL NO.470 OF 2022 MUHAMMAD IQBAL APPELLANT V/S SUPERINTENDING  
ENGINEER SWABI IRRIGATION CIRCLE SWABI & OTHERS

POWER OF ATTORNEY

I, Executive Engineer Swabi Irrigation Division-I Swabi, do hereby authorize Mr.Noor Rahman Deputy Collector Irrigation Division-1 Swabi, to attend the proceedings in the Service Tribunal Peshawar in the subject Appeal. He is also authorized to record statement, file and obtain any documents from the Service Tribunal Peshawar.

  
**EXECUTIVE ENGINEER**  
**Swabi Irrigation Division-I**  
**Swabi**