


FORM OF ORDER SHEET

Court of _____

Appeal No. _____

2089/2023

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 19/10/2023 | <p>The appeal of Mr. Jehangir Khan presented today by Mr. Muhammad Saeed Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Parcha Peshai is given to the counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p> |

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 2089/2023

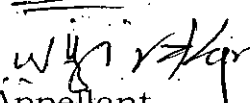
Jehangir Khan.....(Appellant)

VERSUS

Accountant General, Khyber Pakhtunkhwa, Fort Road,
Peshawar Cantt and others.....(Respondents)

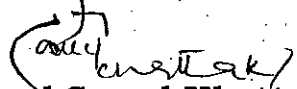
I N D E X

| S.No. | Description of Documents | Annex | Pages |
|-------|---------------------------------------|-------|---------|
| 1. | Service Appeal | | 1-6 |
| 2. | Application for condonation of delay | | 7-8 |
| 3. | Copies of educational service record | A | "9-14" |
| 4. | Copy of the birth certificate | B | "15" |
| 5. | Copies of the judgments of the Courts | C | "16-30" |
| 6. | Copy of application | D | "31" |
| 7. | Wakalat Nama | | "32" |


Appellant

Through

Dated: 17/10/2023


Muhammad Saeed Khattak
Advocate High Court,
Peshawar.
Cell No. 0333-6272753

↙

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 2089/2023

Jehangir Khan S/o Muhammad Shafi R/o House No. 26
Quaid Abad Colony No. 2, P.O. Kakshal, Peshawar..(Appellant)

VERSUS

1. Accountant General, Khyber Pakhtunkhwa, Fort Road,
Peshawar Cantt, Peshawar.
2. Board of Intermediate & Secondary Education Peshawar
through its Chairman.
3. Board of Technical Education, Peshawar, through its
Chairman.
4. NADRA through its Regional Manager, Phase-V, Hayatabad,
Peshawar.
5. Public at Large.....(Respondents)

SERVICE APPEAL U/S 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT 1974, FOR SEEKING
DECLARATION TO THE EFFECT THAT
REAL AS WELL AS THE CORRECT
DATE OF BIRTH OF THE APPELLANT
IS 05/09/1971 WHILE IN THE
RECORD OF THE RESPONDENTS IT
HAS WRONGLY BEEN ENTERED AS
05/09/1969.

Prayer in appeal:

2

On acceptance of the instant appeal the respondents may very graciously be directed to enter the correct date of birth of the appellant in their respective records.

Respectfully Sheweth:

1. That the appellant being highly qualified person and serving as "Senior Auditor" in the department of respondent No. 1. (Copies of educational service record are attached as annexure "A").
2. That the date of birth of the appellant has wrongfully been mentioned as 05/09/1969 in all the above mentioned inserted record as well as in his CNIC issued by the NADRA while his correct date of birth is mentioned in the Birth Certificate i.e. 05/09/1971, which supports the stance of the appellant. (Copy of the birth certificate is attached as annexure "B").

3. That the appellant applied for his CNIC but the concern officials of NADRA matched the DOB with his real sister namely Shaheen bearing CNIC No. 17301-0412090-6 with a DOB 12/06/1969 then the appellant came to know about the wrong entry made in the record of respondents.

4. That in order to correct the wrong entry in the column of DOB, the appellant knocked the doors of Civil Court as well as District Court, wherein he was directed to approach Service Tribunal, it being a proper forum for redressal of the grievance regarding terms and conditions of the service in case of Civil Servants. (Copies of the judgments of the Courts are attached as annexure "C").

5. That thereafter the appellant submitted an application before the office of respondent No. 1 on 05-07-2023 but till date after the expiry of statutory period it has not been replied with. (Copy of application is attached as annexure "D").

- 4
6. That being highly aggrieved the appellant progress the instant service appeal, inter-alia on the following amongst others:

GROUND:

- A. That the appellant has not been treated in accordance with law nor equal protection of law has been extended to him.
- B. That the appellant's sister DOB is 12/06/1969 while his own is 05/09/1969, upon this minor complication the consequences will be the blockage of the whole family tree because of the unnatural difference in Dates of Birth of his himself and his sister. So in order to prevent any future dispute amongst his siblings with regard to inherit once and parentage, it needs to corrected.
- C. That due to the said incorrect entry in record of respondent the appellant is suffering extreme problems and there is strong apprehension that he as well as all his family will meet an irreparable loss.

5

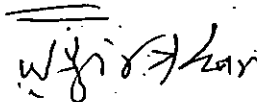
D. That the appellant came to know about the unnatural gap of three months in birth with his sister when his own CNIC was lost/ missing in somewhere and he went to the office of NADRA and where he was directed to report to the police.

E. That this Hon'ble Tribunal is quite competent to issue an appropriate direction to the respondents to correct the entries regarding DOB of the appellant in their record as per Section 7 (2) of the KPK Service Tribunal Act, 1974, A Tribunal or a Bench constituted under Section 5 shall for the purpose of deciding any appeal be deemed to be a Civil Court as shall have the same powers as vested in such Court under the Code of Civil Procedure 1908 (Act V of 1908).

F. That Hon'ble apex Courts are of the view that its not an absolute rule that DOB recorded in service book of civil record such entry once made could not be altered or changed.

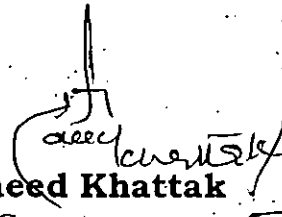
G. That any other grounds can also be taken with permission of this Hon'ble Tribunal during the arguments.

It is, therefore, humbly prayed that on acceptance of the instant appeal the respondents may very graciously be directed to enter the correct date of birth of the appellant in their respective records.


Appellant

Through

Dated: 17/10/2023


Muhammad Saeed Khattak
Advocate High Court,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

C.M. No. _____/2023

In

Service Appeal No. _____/2023

Jehangir Khan.....(Appellant)

VERSUS

Accountant General, Khyber Pakhtunkhwa, Fort Road,
Peshawar Cantt and others.....(Respondents)

APPLICATION FOR CONDONATION
OF DELAY IF ANY.

Respectfully Sheweth:

1. That the instant Service Appeal has been filed today, wherein no date has yet been fixed for hearing.
2. That the facts mentioned and grounds taken in the main appeal may also be considered as part and parcel of the instant application.
3. That the appeal is within time after getting the knowledge but otherwise too the apex Courts have

favoured the cases to be decided on merits rather than technicalities including the limitation.

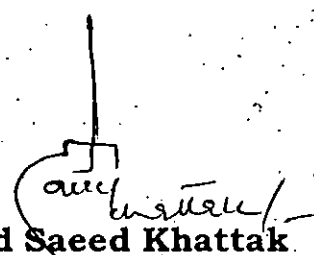
4. That it is being hardship case and there is strong apprehension of the irreparable loss to the appellant and his family.
5. That any other grounds can also be taken with permission of this Hon'ble Tribunal during the arguments.

It is, therefore, most humbly prayed that on acceptance of the instant application, the delay if any may kindly be condoned.


Appellant

Through

Dated: 17/10/2023


Muhammad Saeed Khattak
Advocate High Court,
Peshawar.

29 Annex (A) (9)

sNo 535316

Roll No. 448



BOARD OF INTERMEDIATE AND SECONDARY EDUCATION



Peshawar N.W.F.P. Pakistan
Secondary School Certificate Examination

SESSION 1986 SUPPLEMENTARY

THIS IS TO CERTIFY THAT Jehangir Khan
Son/Daughter of Haji Mohammad Shafi
and a resident of Peshawar District

has passed the *Secondary School Certificate Examination*
of the Board of Intermediate & Secondary Education, Peshawar held in October 1986 as
a *Private Candidate*. He/She obtained 424 Marks out of 850
and has been placed in Grade D Representing Fair

The Candidate passed in the following subjects:

- | | | | |
|------------|---------------------|----------------|------------|
| 1. English | 3. Islamiyat | 5. Mathematics | 7. Physics |
| 2. Urdu | 4. Pakistan Studies | 6. Chemistry | 8. Biology |

Date of birth according to admission form is Fifth September,

one thousand nine hundred and Sixty Nine (05-9-1969)

Q. A. I.
Asstt. Secretary
27th December 1986

38

AM
Secretary

This certificate is issued without alteration or assent.

etc

(For use in Police Department only).

10

Heirs,

- 1.
- 2.
- 3.

Verification Roll No. _____ dated _____ received back _____

Passed MA from university of Peshawar in 2012 under Roll No 43131

Asstt. Accounts Officer
 of A.G. Khyber Pakhtunkhwa Peshawar

| Qualification | Date | Qualifications | Date |
|-------------------|--|--------------------------------------|---|
| English | | 1) Passed SS-C examination | |
| Pashtu | <i>Passed B.com in 'B'</i> | 2) First Arts | <i>Passed in 1986 under Roll No. 448 and marks obtained 424/850</i> |
| Urdu | <i>Grade from Allama Iqbal</i> | 3) Passed C-Law examination | <i>under Roll No. 2815 in 1988</i> |
| Plan-drawing | <i>Open university Islamabad</i> | 4) Pledership examination | <i>under Roll No. 8700 in 1990</i> |
| Finger print | <i>under Roll No - 407003759 in 2010. Reg. No. of NPR 6127</i> | 5) Training School Final examination | <i>under Roll No. 8700 in 1990</i> |
| Drill instructing | | 6) Other qualifications - | |
| Court duties | <i>Asstt. Accounts Officer, Office of A.G. NWFP, Peshawar</i> | 7) Passed BA examination | <i>under Roll No. 100254 in 1981 from University of Peshawar and marks obtained 223/300</i> |
| Reserve duties | | | |

[Signature]
 ASSTT. ACCOUNTS OFFICER
 Office of the Accounts Officer
 NWFP, Peshawar.
 14/4/01

N. B.—Line to be drawn under the qualification possessed.

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

1. Name **JEHANGIR KHAN**

2. Race **AFGHAN**

3. Residence **H. NO. 26 QAID AHAD COLONY NO. 2
POST OFFICE QAID AHAD BILAL HOUSE PESHAWAR CITY**



4. Father's name and residence **Haji Mohammad Sufi**

5. Date of birth by Christian era as nearly as can be ascertained **05, 09, 1969**


6. Exact height by measurement **5-6**

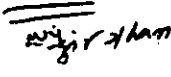
7. Personal marks for identification **A MOLE ON FACE - RIGHT SIDE**


8. Left hand thumb and Finger impression 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. 
ACCOUNTS OFFICER
Office of the Accountant General
P.W.F., Peshawar.

General. P.W.F.  

(12)

4

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|--------------------------------|------------------------------------|---|------------------|-----------------|----------------------------|-------------|----|
| Name of post | and whether permanent or temporary | If officiating, state (ii) whether service counts for pension under Art. 371 C. S. R. | substantive post | for officiating | Other under the term "Pay" | | |
| JR - Auditor (1400-66-2390) | | | Rs. 1400/- | | | 15 12 / 99 | PA |
| do | | | Rs. 1466/- | | | 1 12 / 2000 | |
| do | | | Rs. 1532/- | | (12 Adv. with - BA) | 15 12 / 99 | |
| do | | | Rs. 1598/- | | | 1-12-2000 | |
| do | | | Rs. 1664/- | | | 1-12-2001 | |

Jr. Auditor (B-5)
 9100-100-5100
 Office of the Accountant General
 N.W.F.P. Peshawar.
 Pay Fixed in the Revised Pay Scales 2001
 Rs. 2500/-
 P.M.W.B.E. 1-12-2001
 With Next Increment on 1-12-2002
 Account Officer (Admin)
 Peshawar

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PAKISTAN National Identity Card

Name: Jehangir Khan


Father's Name: HAJI MUHAMMAD SHAFIQ

Gender: M. Country of Stay: Pakistan


Identity Number: 17301-9387861-3 Date of Birth: 05.09.1969

Date of Issue: 23.01.2021 Date of Expiry: 23.01.2031

Holder's Signature



17301-9387861-3




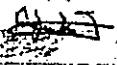



505521455212
133-80-19518

Registrar General of Pakistan

گشده کارڈ ملنے پر تقریبی لیٹر بکس میں ڈال دیں

14

| | | |
|---|-------------------------------------|--|
|  PAKISTAN National Identity Card <small>ISLAMIC REPUBLIC OF PAKISTAN</small> | |  |
| Name Shaheen Tariq | | شہین طارق |
| Husband Name Tariq Khan | | طارق خان |
| Gender F | Country of Stay Pakistan |   Holder's Signature |
| Identity Number 17301-0412050-6 | Date of Birth 11.06.1968 | |
| Date of Issue 23.01.2021 | Date of Expiry 23.01.2031 | |

| | |
|---|--|
| 725 725 | 17301-0412050-6  505521-453211 135-88-196186 |
| گمشدہ کارڈ ملنے پر قریبی ایئر کیم میں ڈال دیں | |



حکومت خیبر پختونخوا پاکستان
Govt of Khyber Pakhtoonkhwa Pakistan



اندراج پیدائش سرٹیفکیٹ
Birth Registration Certificate

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15
Annex B

Form No: W10785800

دفتر اندراج یو این کونسل کاکشال-2

Registration ID: 50097910036161

Form No: BS00979-19-11591

Form REG #:

Child's Details بچے کے کوائف

Name: JEHANGIR KHAN

نام: جہانگیر خان

Date of Birth: 05-September-1971

تاریخ پیدائش: 05-September-1971

Sex: Male

Religion: ISLAM

مذہب: اسلام

Place of Birth: PESHAWAR

پیدائش کا مقام: پشاور

Parental Information والدین کی معلومات

Father's Name: MUHAMMAD SHAFI

والد کا نام: محمد شفیق

Nationality: Pakistani

قومیت: پاکستانی

Registration No:

شناختی کارڈ نمبر:

Mother's Name: SHAHI GUL

والدہ کا نام: شاہی گل

Nationality: Pakistani

قومیت: پاکستانی

Registration No:

شناختی کارڈ نمبر:

Grandfather's Name: FAQIR MUHAMMAD

دادا کا نام: فقیر محمد

Registration No:

شناختی کارڈ نمبر:

Address پتہ

Address: quaid abad colony no 2 bilal house kakshal, House No. 26, City PESHAWAR,

پتہ: قائد آباد کالونی نمبر 2 بیلال ہاؤس کاکشال، مکان نمبر 26، شہر پشاور،

City: PESHAWAR

تعمیر: پشاور

District: PESHAWAR

ضلع: پشاور

Applicant's Details درخواست دہندہ کے کوائف

Name: JEHANGIR KHAN

نام: جہانگیر خان

C No: 17301-9387861-3

شناختی کارڈ نمبر: 17301-9387861-3

Registration of Child: SELF (MALE)

بچے کا رجسٹر: مرد خود

Registration Date: 20-September-2019

تاریخ اندراج: 20-September-2019

Declaration Date: 20-September-2019

تاریخ اقرار: 20-September-2019

Registration Status: Late

اندراج کی حالت: تاخیر

A.P. Hussain
Secretary Union Council

Kakshal-II, 25

یو این کونسل

کاکشال-2



W10785800

Certificate can be verified at <https://crms.nadra.gov.pk/verify>

Handwritten signature and notes.

Jehangir Khan, Vs. Board etc

Annex (9) 16

IN THE COURT OF
NAZIA HASSAN
CIVIL JUDGE-VIII, PESHAWAR

Case No.361/1 of 2019

Jehangir Khan S/o Muhammad Shaif R/o House No. 26
Quaid Abad Colony No.2 Post Office Kakshal Peshawar
.....(Plaintiff)

VS

1. Chairman board of Technical Education Peshawar through Secretary
2. Chairman Board of Intermediate & Secondary Education, Peshawar
3. V.C University of Peshawar through Registrar
4. Accountant General AG office Peshawar through representative
5. NADRA through registrar Hayatabad Phase-V Peshawar (Defendants)

Civil Judge VIII Peshawar
NAZIA HASSAN
14/09/2021

- Date of Institution..... 24.10.2019
- Date of Decision.....14.09.2021

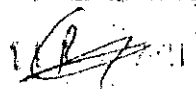
163

SUIT FOR DECLARATION CUM PERMANENT
INJUNCTION

JUDGMENT:
14.09.2021

18

ATTESTED



(Examiner)

Noted Court Peshawar

1. Brief facts of the case are that plaintiff has filed the instant suit for declaration against the defendants to the effect that his correct date of birth is 05.09.1971 while the defendants

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Jehangir Khan, Vs., Board etc

have wrongly entered the same as 05.09.1969, which is against law and facts and liable to correction. Plaintiff also sought permanent and directory injunction against the defendants, hence, the present suit.

2. Defendants were summoned through process of the court. Defendants No.1, 3 & 4 did not bother to appear before the court, hence, were placed and proceeded exparte while defendants No.2 and 5 appeared before the court and opted to contest the lis in hand by filing written statement.

14/9/2021
Civil Judge, Peshawar

3. Out of the divergent pleadings of the parties, the following amended issues were framed.

ISSUES:


1. Whether plaintiff has got cause of action?
2. Whether plaintiff is estopped to sue?
3. Whether suit of the plaintiff is within time?
4. Whether the correct date of birth of the plaintiff is 05.09.1971 instead of 05.09.1969 which is liable to correction?
5. Relief

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CTC
CA

ATTESTED


(Examiner)
District Court Peshawar


Jehangir Khan Vs. Board etc

4. Parties were afforded equal opportunities to lead their desired evidence which were availed accordingly.

Plaintiff's Evidence:

- Jehangir Khan S/o Muhammad Shafi (plaintiff) appeared before the court and recorded his statement as Pw-1 and produced birth certificate as ExPW-1/1, CNIC as ExPW-1/2, Matric certificate as ExPW-1/3, D.Com certificate as ExPW-1/4 and B.Com certificate as ExPW-1/5, BA certificate as ExPW-1/6, CNIC of plaintiff's sister as ExPW-1/7 and NADRA token as ExPW-1/8.
- Tariq Khan S/o Wazir Muhammad appeared before the court and recorded his statement as Pw-2 and produced his CNIC as ExPW-2/1.
- Munir Muhammad S/o Faqeer Muhammad appeared before the court and recorded his statement as Pw-3 and produced his CNIC as ExPW-3/1.
- Aftab Hussain (Secretary Union Council) appeared before the court and recorded his statement as Pw-4. Thereafter plaintiff closed his evidence.

14/9/2021
ATTESTED


(Examining Officer)
District Court, Islamabad

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etc
etc

(Handwritten initials)

Jehangir Khan vs Board etc

Defendant's Evidence:

- Muhammad Ishfaq, Record Clerk NADRA office, representative for defendant No.5 appeared as Dw-1 and relied upon his written statement and exhibited record of the plaintiff as ExDW-1/1.
- Muhammad Asim Jan, Record Clerk board office, representative for defendant No. 2 appeared as Dw-2 and relied upon their written statement and exhibited power of attorney as ExDW-1/1 and record of the plaintiff as ExDW-2/1. Thereafter defendants' evidence was closed.

(Handwritten signature)
NAZIR AHMED
Civil Judge-III, Peshawar

5. I have heard the contentions of learned counsel for the contesting parties and hammer out the available record with their able assistance, my issue wise findings are as under:

ISSUES NO.2 & 4:

2. *Whether plaintiff is estopped to sue?*

and

4. *Whether the correct date of birth of the plaintiff is 05.09.1971 instead of 05.09.1969 which is liable to correction?*

(Handwritten marks: 60, 22, 22)

ATTESTED

(Handwritten signature)
(Examiner)
District Court Peshawar

(Handwritten initials)

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Jehangir Khan vs. Board etc

6. Both issues are interconnected therefore, clipped together to avoid repetition of facts and at once discussion. Upon matter in controversy between the parties.

7. Plaintiff claimed that he tried for issuance of CNIC and he came to know about the fact that his real sister namely Mst. Shaheen date of birth in the record of defendants has mentioned as 12.06.1969 and his date of birth is 05.09.1969 which creates un-natural gap between their ages.

8. On the other hand defendant bluffly denied the plaintiff stance on the score that date of birth of a student or candidate in their relevant record is entered being furnish to them through the entries made in the SSC examination admission form. However, the un-natural difference of one month and 07 days in age of the plaintiff and his sister does not mean that their record is incorrect and wrong.

9. Plaintiff in order to get him entitled to the fruit of the relief claimed needed to prove the same through cogent and confidence inspiring evidence. As per available record

MAZNA F. SHAIKH
Civil Judge, Peshawar
14/9/2021

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CJC

ATTESTED

(Examiner)
District Court Peshawar

Jehangir Khan Vs Board etc.

plaintiff passed SSC examination in the year 1986 and the same date of birth has entered in the plaintiff service book too. Plaintiff applied for fresh birth certificate ExPW-1/1 on 20.09.2019, on the same day it was issued by the secretary Union council and later on filed the present suit on 24.10.2019. The plaintiff's real sister Mst. Shaheen is a house wife while the plaintiff is a government servant still in service and serving as a Senior Auditor. Question arises here the plaintiff's real sister Mst. Shaheen could seek correction of her date of birth easily. Her educational record was not brought on the record by the plaintiff. It is well settled postulate of law where there is disparity in date of birth entered in the educational testimonials of a person, national identity card or birth certificate, credence is to be given to entry of date of birth in the educational testimonials, reliance has been placed on PLJ 2018 Islamabad 105.


ONE
17/10/2021

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CFC
CJ

ATTENDED


(Examined)
District Court, Rawalpindi

10.

Record further evinces that the alleged wrong entry came into the knowledge of the plaintiff when he applied for fresh CNIC

(NS)

Jehangir Khan vs Board etc

which was duly incorporated in various record of the board and University. On the basis of alleged wrong date of birth the plaintiff joined service in 1999, has completed more than 22 years of his service and is near to reach the age of superannuation. He awakened from a deep slumber and filed present lis on 24.10.2019 in order to gain extension in service. During the long period of service he never objected the date of birth. Apart from that under this date of birth duly recorded in the testimonials he joined service, secured promotion and now reached to the post of Senior Auditor in AG Office.

11/11/2021
 NAZIR HUSSAIN
 Civil Judge - VIII, Peshawar

11. It is also important to mentioned here that a student and his/her parents have to be very careful, alert and vigilant while disclosing the date of birth at the time of submission of forms for the examination of SSC/matriculation because Secondary School Certificate (SSC) issued by the Board of Intermediate & Secondary Education, goes with the life of a student as this certificate is the authentic proof of the student's date of

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CJC

ATTESTED

[Signature]

(Examiner)

District Court Peshawar

(86)

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Jhungir Khan Vs. Board etc

birth and is invariably accepted as valuable piece of evidence in proof of the date of the person in question throughout his career. It is also involves many consequences and particularly affects the date of retirement etc.

12. In the wake of foregoing discussion, the plaintiff is legally estopped to challenge the aforesaid date of birth specifically in the circumstances when he is about to reach the age of superannuation within coming few years which cannot be corrected at this stage. Besides the matter relating to the terms and conditions of service which can only be challenged before the services tribunal.

(Signature)
Civil Judge III, Peshawar

13. In the attending circumstances, issue No.2 is replied in positive while issue No.4 is decided in negative.

(Signature)

ISSUES NO. 3:

26

3. Whether suit of the plaintiff is within time?

14. The defendants in written statement raised the plea of limitation but nothing was brought on the record during evidence.

(Signature)

Article 120 of Limitation Act, 1908,

ATTESTED
(Signature)
(Examiner)
District Court Peshawar

Jehangir Khan Vs Board etc

provides 06 years limitation for filing declaratory suit thus, the suit is hit by law of limitation, issue is replied in negative.

ISSUE NO.1:

1. Whether plaintiff has got cause of action?

15. On the basis of my detailed issuewise findings, the plaintiff has got no cause of action. The issue is decided in negative.

RELIEF:

16. As sequel to my detailed discussion and findings on the above issues, suit of the plaintiff is dismissed. No order as to costs.

17. File be consigned to Record Room after necessary completion and compilation.

Announced:
14.09.201

(NAZLA HASSAN)
Civil Judge-VIII, Peshawar

CERTIFICATE:-

Certified that this judgment of mine consists of **Nine (09)** pages. Each and every page has been read over and signed by me after making necessary corrections.

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|-----------|--------------|
| No. | 18-10-11 |
| Date | 18-10-11 |
| Name | NAZLA HASSAN |
| Signature | [Signature] |
| Post | P-36 |
| City | Peshawar |

(NAZLA HASSAN)
Civil Judge-VIII, Peshawar

CERTIFIED TO BE TRUE COPY

(19)

Order
14.09.2021

Learned counsel for the parties present. Vide detailed judgment of today consisting of Nine (09) pages separately placed on file, suit of the plaintiff is dismissed. No order as to costs.

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

Announced:
14.09.2021

(NARBA HASSAN)
Civil Judge-VIII, Peshawar

ATTESTED

(Examiner)
District Court Peshawar

28

Handwritten notes in Urdu: 14/09/2021

26

IN THE COURT OF SYED SHAUKAT ULLAH SHAH,
ADDITIONAL DISTRICT JUDGE-XIV, PESHAWAR

Civil Appeal No. 40/13 of 2021

**Jehangir Khan---VERSUS --- Chairman Board of Technical
Education Peshawar through Secretary & 04 Others.**

Date of Institution..... 01.11.2021

Date of Decision..... 29.03.2022

ORDER

29.03.2022

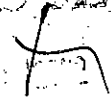
Clerks of counsel for the parties present. Arguments already heard and record perused.

Vide my detailed judgment of today consisting of four (04) pages and separately placed on this file, the appeal is allowed. The impugned judgment and decree is set aside. The plaint is returned to appellant. The appellant may file an application to the learned Trial Court for return of the plaint and the learned Trial Court shall do the needful as per law. Record be returned to the learned Trial Court alongwith copy of this judgment while file of this court be consigned to record room after its necessary completion and compilation.

Announced

29.03.2022

29.3.22
SYED SHAUKATULLAH SHAH
Additional District Judge-XIV,
Peshawar.


District Court Peshawar

27

IN THE COURT OF SYED SHAUKAT ULLAH SHAH,
ADDITIONAL DISTRICT JUDGE-XIV,
PESHAWAR

Civil Appeal No. 40/13 of 2021

**Jehangir Khan Son of Muhammad Shafi resident of House No. 26 Quaid
Abad Colony No.2 P/O Kakshal, Peshawar.....(Appellant/Plaintiff)**

VERSUS

**Chairman Board of Technical Education Peshawar through secretary &
04 Others.....(Respondents/Defendants)**

Date of Institution..... 01.11.2021

Date of Decision..... 29.03.2022

JUDGMENT

1. This appeal is filed against judgment and decree dated 14.09.2021 by which the Court of learned Civil Judge-VIII, Peshawar dismissed the suit of the appellant for declaration and mandatory injunction.

Facts of the case are that appellant/plaintiff filed suit No. 361/1 of 2019 for declaration, perpetual and directory injunction to the effect that his correct date of birth is 05.09.1971 which is correctly entered in his birth certificate and his date of birth was wrongly entered as 05.09.1969 in his academic record; that the date of birth of appellant was also inadvertently entered as 05.09.1969 by NADRA and also in the service record of the appellant; that the appellant applied for obtaining NIC but the concerned official of NADRA matched his date of birth with his real sister Shaheen bearing CNIC No. 17301-0412090-6 and her date of birth is 12.06.1969 and due to this minor complication (un-natural gap), the result would be blockage.

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14 JUN 2022
(Examiner)
District Court Peshawar

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of the whole family tree. The appellant approached the respondents time and against for the required correction but they refused to correct the same. Hence, the suit.

3. Respondents/defendants were summoned by the learned Trial Court. Respondents No. 2 and 5 contested the suit by filing their separate written statement. The remaining respondents were proceeded against ex-parte due to non-attendance despite service. The learned Trial Court framed the following issues from the pleading of the parties:-

ISSUES:-

1. Whether plaintiff has got cause of action?
2. Whether plaintiff is estopped to sue?
3. Whether suit of the plaintiff is within time?
4. Whether the correct date of birth of the plaintiff is 05.09.1971 instead of 05.09.1969 which is liable to correction?

ATTESTED

14 JUL 2022

(Examiner)
District Court Peshawar

Relief.

Parties produced evidence of their choices and after hearing arguments of the learned counsel for the parties, the learned Trial Court dismissed the suit of the appellant vide judgment and decree dated 14/09/2021. The appellant is aggrieved of the impugned judgment and decree and filed this appeal.

5. Arguments of learned counsel for the parties heard. Record perused.

19/3/22

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6. The appellant in his statement as PW-01 has deposed that his date of birth was wrongly entered as 05.09.1969 in his NIC and in his academic record. He also stated that his date of birth was entered as per his NIC in his service record (record of A.G Office). In his cross examination, the appellant stated that he is in government service and posted as Senior Auditor in A.G office (Accountant General Khyber Pakhtunkhwa, Peshawar). He stated that he was recruited on 15.12.1999 and in his service record his date of birth is mentioned as 05.09.1969. Thus, admittedly the appellant is a civil servant and any change in his date of birth would certainly affect the terms and conditions of his service. According to section 12-A of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, 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. The date of birth of a civil servant is part of terms and conditions of his service. Therefore, Civil Court has no jurisdiction in matter pertaining to terms and conditions of service of a civil servant, including correction in date of birth. The Service Tribunal has exclusive jurisdiction in such matters.

TESTED
 14 FEB 2022
 (Examiner)
 District Court Peshawar

The learned Trial Court had no jurisdiction in the matter. The learned Trial Court was not supposed to decide the case on merits and the plaint should have been returned to the appellant for want of jurisdiction. Therefore, the learned Trial Court committed error by deciding the case on merits.

7. In view of the above discussion, the appeal is allowed. The impugned judgment and decree is set aside. The plaint is returned to appellant. The appellant may file an application to the learned Trial Court for return of the

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Appeal No. 40/13 of 2021 Titled: Jehangir Khan...VS... Chairman Board of Technical Education Peshawar & Others.

plaint and the learned Trial Court shall do the needful as per law. Record be returned to the learned Trial Court alongwith copy of this judgment while file of this court be consigned to record room after its necessary completion and compilation.

Announced
29.03.2022

SYED SHAUKATULLAH SHAH
Additional District Judge-XIV,
Peshawar.

[Signature]
29.3.22

CERTIFICATE

Certified that this judgment consists upon four (04) pages and each page has been signed by me after necessary correction.

SYED SHAUKATULLAH SHAH
Additional District Judge-XIV,
Peshawar.

[Signature]
29.3.22

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District Court
Peshawar.

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| No. | 36910 |
| Date | 15/7/22 |
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| By | P-15 |
| Signature | <i>[Signature]</i> |
| Date of issue | 14/7/22 |
| Date of filing | 14/7/22 |

10

The Accountant General,
KPK, Peshawar.

Departmental Appeal/Representation for correction of
DOB in service record of the appellant which has
wrongly been inserted as 05-09-1969 instead of 05-09-1971
Respectfully Shown,

1. That the appellant is serving as 'Senior Auditor' in
the department under your kind command.
2. That DOB of the appellant has wrongly been inserted
as 05-09-1969 instead of 05-09-1971.
3. That the appellant came to know about the unnatural
gap of DOB with his real sister of three months
when his own entry was lost and he applied for
fresh one.
4. That this incorrect entry in the service record will disturb
the whole family tree. So in order to prevent any
future dispute among his siblings with regard to
inheritance and parentage it needs to be corrected.

It is therefore most humbly prayed that
on acceptance of the instant representation the
DOB of the appellant may kindly be inserted as
05-09-1971 instead of 05-09-1969 in the service
Record.

The appellant will remain thankful,

Dated
05-07-2023

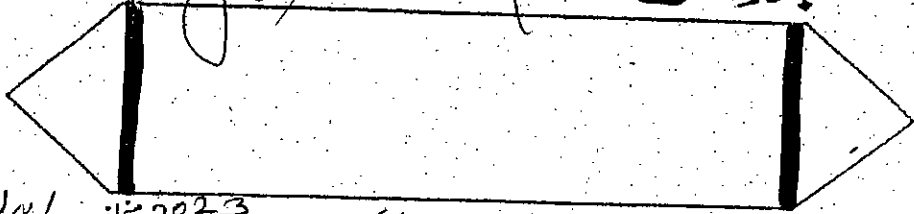
Wajid Khan
Appellant

Jehangir Khan S/o Muhammad Shafi
R/o Kakeshal, Peshawar.

C. O. No.

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بعدالت
۲۲ اوسین ٹریبونل لیسام



2023 مجانب ایبل
جانلم خان بنام
اکاوسٹیشنر

موزتہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان یا لای میں اپنی طرف سے واسطے پیروی و جواب دہی دکن کاروائی متعلقہ
آن مقام کے لیے محمد سعید حنیف صاحب کو مقدمہ کی کل کاروائی کا مکمل اختیار دیا گیا۔ نیز
مقرر کر کے قرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار دیا گیا۔ نیز
دیکل صاحب کو راشی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور دیکل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو چیز چاہے وہ جرات التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو دیکل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا ادکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 18
ماہ 20

امین خان

محمد سعید حنیف

بمقام لیسام

کے لئے منظور ہے۔
CNIC: 14203-2050442-1
bc-11-1889
Ishaq pharostate (HCP) 1/20 033382727531

محمد سعید حنیف