Affeal No. 133 2/2015 Qasam Khan Vs Edu

28.1.2016

Counsel for the appellant present. Learned counsel for the appellant when confronted with the record argued that the appellant has submitted departmental appeal to the competent authority vide application dated 28.3.2015.

Record perused. The said application was addressed to the competent authority for correction of the date of birth and the same cannot be treated as a departmental appeal to the appellate authority.

The instant appeal is, therefore, not found competent. The same is dismissed with the observations that the appellant shall first seek redressal of his grievances through departmental appeal and may there-after prefer service appeal, if so advised. File be consigned to the record room.

28.01.16.

ANNOUNCED 28.1.2016

Form- A FORM OF ORDER SHEET

Courtor		
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Case No	1332/2015	<u> </u>

	Case No	1332/2015
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	30.11.2015	The appeal of Mr. Qasan Khan presented today by Mr. Mukhtiar Ahmad Maneri Advocate may be entered in the
		Institution register and put up to the Worthy Chairman for
		proper order.
	, :	REGISTRAR -
2	1-12-12	This case is entrusted to S. Bench for preliminary
		hearing to be put up thereon $0 \ge -12 - 2015$.
		CHAIRMAN
	02.12.2015	Counsel for the appellant present. Learned counsel f
		the appellant during the course of hearing was confronted wi
.,		the departmental appeal which is not made seeks adjournment
-		Adjourned to 30.12.2015 before S.B.
		:
-		
-	30.12.2015	Appellant in person present. Requested f
,		adjournment. Adjourned to 28.1.2016 before S.B.
		Member
	•	

BEFORE THE KHYBE PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No _	1332	/2015
Qasam Khan		Petitioner
VERS	US	
District Education Officer		Respondents

INDEX

S.NO.	DESCRIPTION OF DOCUMENTS	ANNUEXURE	PAGES
1	Memo of Appeal with affidavit		1 - 3
2	Application for Condonation of delay with affidavit		4
2	Application for stay with affidavit		5
3	Copy of appointment order	Α	6
.4	Copy of judgment and decree	В	7-11
5	Copy of CNIC of appellant	С	12-13
6	Copy of application of appellant	D	14
7	Copy of relevant pages of attendance register	E .	15
8	Copy of Service Card	F :	16-18
9	Wakalatnama		19

Peshawar.

Petitioner

Dated: 30-11-2015

Through:

MUKHTAR AHMAD MANERI

Advocate High Court

Office # 24-A, Nasir Mansion,

2-Railway Road, Shoba Bazaar,

Peshawar.

Off:091-2214385 Mob: 0333-215-6006

BEFORE THE KHYBE PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No 1332 /2015

Qasam Khan, Son of Namdar, Resident of Village Mian Kallay, P.O Charbagh, Tehsil Razar, District Swabi.....

M.V.P.Province Pervice Tribuga

Biary No 3

VERSUS.

- 1. District Education Officer (Female), (E&S) District Swabi.
- 2. Director Education, (E&S) Government of KPK, Peshawar.
- 3. Government of KPK, Through Secretary Education (E&S), Civil Secretariat, Peshawar......Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974.

Respectfully Sheweth;

1. That the appellant named above was appointed as Chowkidar at Government Primary School Mian Killy, District Swabi on 01-08-1998.

> Copy of appointment order is attached as Annexure A

- 2. That the appellant came to know that his real date of birth as per school record is 12-12-1961 but inadvertently the then NADRA has entered his date of birth in his National Identity Card 1955.
- 3. That the moment the appellant came to know about his real date of birth, he then and there informed the NADRA to get his date of birth correct and in the same manner duly intimated his department in respect of the above mentioned fact.
- 4. That the appellant then instituted a civil suit before the competent court of law in respect of correction of his date of birth, and after recording of



evidence and hearing arguments, his suit was decreed vide judgment and decree in civil suit No.127/1 of 2014.

Copy of judgment and decree is attached as Annexure B

5. That the appellant approached the department of NADRA to make necessary correction in his CNIC and accordingly he was give new CNIC with date of birth as per his school record.

Copy of CNIC of appellant is attached as Annexure C.

6. That thereafter the appellant filed an application to the concerned quarter for making necessary corrections in his date of birth in his service record vide his application dated 28-03-2015 which could not be replied so far, hence this appeal.

Copy of application of appellant is attached as Annexure D

7. That the appellant was waiting for order on his application but the respondents did not pass any order on his application and he was kept with false promises and the appellant is duly and regularly performing his duties vide his attendance at GPS, Mian Killy.

Copies of relevant pages of attendance register and Service Card of Petitioner are attached as Annexure E & F

8. That delay in filing of the instant appeal occurred due to the reasons that the respondents time and again told the appellant that his case is under process and his grievances shall be redressed duly but so far no fruitful result, hence the delay in preferring of the instant appeal may kindly be condoned for which separate application for condonation of delay is also filed with the instant appeal; hence this appeal on inter alia the following grounds;

GROUNDS:

a. That the as per the judgment of competent court of law in favour of appellant and subsequent rectification of the date of birth of the appellant has made it mandatory for the respondents to get his date of birth correct in his service record and while not doing so, they had committed illegality and irregularity.

- b. That the appellant has time and again requested the respondents but all his efforts gone in vain and as such the appellant has been deprived of his valuable right.
- c. That the delay has occurred due to the negligence on the part of the respondents as such the same may kindly be condoned in the best interest of justice, equity, law and good conscious.
- d. That the appellant urges other grounds at the time of hearing of this appeal with kind permission of this honorable court, hence this appeal with the following prayer;

Prayer;

It is, therefore, prayed that this honorable court may be pleased and allow the appeal of the appellant named above and direct the respondents to make necessary corrections in his service record and get his date of birth correct as per his new CNIC.

Any other relief/s which this honorable court may deem fit and proper in the circumstance of the case may also be granted in the best interest of justice.

Peshawar

Dated: 30-11-2015

ق اسر ف ن Appellant

Through

Mukhtar Ahmad Maneri. Advocate High Court Peshawar.

AFFIDAVIT

I the undersigned on as per instruction of appellant do hereby state on solemn affirmation that the contents of the appeal are true and correct.

Commissioner for taking affidavits.

Deponent

BEFORE THE KHYBE PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No	/2015
Qasam KhanVERSUS	Petitioner
District Education Officer	Respondents

APPLICATION FOR STAY

Respectfully Sheweth;

- 1. That the above titled appeal is being filed today in which no date has yet fixed.
- 2. That the appellant has got a good prima facie case against the respondents as balance of convenience tilt in his favour and in case the application is not allowed the appellant shall irreparable loss and this would also result in miscarriage of justice.
- That the contents of appeal may kindly be treated as integral part of this application as same has not been reproduced here for the sake of brevity in order to avoid repetition, hence this application with the following prayer;

It is, therefore, prayed that this honorable court may be pleased and restrain the respondents to appoint any chowkidar on the post of appellant till the decision of this appeal otherwise the purpose of this appeal would be defeated.

Peshawar

Dated: 30-11-2015

Appellant

Through

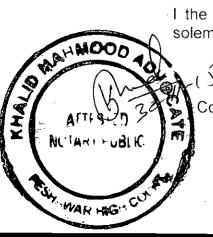
Mukhtar Ahmad Maneri Advocate High Court Peshawar

AFFIDAVIT

I the undersigned on as per instruction of appellant do hereby state on solemn affirmation that the contents of the appeal are true and correct.

Commissioner for taking affidavits.

Deponent



5

BEFORE THE KHYBE PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal.No _	/2015
Qasam Khan	Petitioner
VERS	SUS
District Education Officer	Respondents
VERS	SUS

<u>APPLICATION FOR CONDONATION OF DELAY</u>

Respectfully Sheweth;

- 1. That the above titled appeal is being filed today in which no date has yet fixed.
- 2. That the appellant has got a good prima facie case against the respondents as balance of convenience tilt in his favour and in case the application is not allowed the appellant shall irreparable loss and this would also result in miscarriage of justice.
- 3. The delay has occurred in preferring the instant appeal due to the reasons that the respondents have kept the appellant on false promises that they will consider his case for which he had move an application details of which are crystal clear, hence this application with the following prayer;

It is, therefore, prayed that this honorable court may be pleased and condone the delay in filing of the above titled appeal in the best interest of justice and law.

Peshawar

Dated: 30-11-2015

Appellant

Through

Mukhtar Ahmad Maneri Advocate High Court Peshawar

AFFIDAVIT ~

I the undersigned on as per instruction of appellant do hereby state on solemn affirmation that the contents of the appeal are true and correct.

ommissioner for taking affidavits.

Deponent ____

ONAL EDUCATION OFFICER (FEMALE) SWAB

OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER (FEMALE) SWABI.

APPOINTMENT.

OFFICE ORDER.

and P.O. Mis. - Icelli is hereby appointed against the Chowkider post at the Rate of Rs. 1500/-PM fixed on CONTRACT BASIS at Govt:

Girls Primary School Misselli from the late of public service on the late of t

TERMS & CONDITIONS.

- His appointment has been made on contract basis for one
- Agreements for the appointment prescribed by the deptt:
- 3. He will govern with the term & conditions mentioned in the agreement as under:-
 - 1. His appointment is purely made on temperary basis & liable to termination at any time without assigning any reasons or notice.
 - ii. In case of resignation he will give to submit one month prior notice to the department & forefect one month pay in lieu-thereof the Govt:
 - iii. He is required to produce Health and age certificate from the DHC, Swabi before the taking over charge.
 - IV. Chargo report should be submitted to all esneerned.

He should not be allowed to take over charge if their age is less than 18 years or not more than 45 years at the time of appointment.

SUB DIVISIONAL EDUCATION OFFICER (FEMALE) SWABI

Endst:No. (6-6) /E-B-28/C-IV's:Apptt:/Dated Swabi the 3/8/1998

Copy of the above is forwarded for information and necessary action to the:-

- 1. District Education Officer (F) Primery Swabis.
- 2. DISTRICT ACCOUNTS OFFICER SWABI.
- 3. A.S.D.E.O (A) LOCAL OFFICE.
- 4. A.S.D.E.O.(F) Concerned.
- 5.2 Headmistress Concerned School.
- 6. Candidate Concerned.

SUB DIVISIONAL EDUCATION OFFICER (FEMALE) SWABI

Said Rahman/@ 25021998.

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Assested

IN THE COURT OF SYED ZAHID SHAH CIVIL JUDGE-VI, SWABI

QASIM KHAN S/O NAMDAR R/O MIAN KILAY, TEHSIL RAZAR DISTRICT SWABI....(PLAINTIFF)

VERSUS

- ASSISTANT MANAGER NADRA, SWABI.
- 2. GENERAL MANAGER, NADRA PESHAWAR.
- 3. CHAIRMAN NADRA ISLAMABAD.....(DEFENDANTS)

SUIT FOR DECLARATION/MANDATORY INJUNCTION

JUDGMENT

Plaintiff Qasim Khan has instituted the present suit for declaration against defendants alleging that his correct date of birth is 12.12.1961; while the same is inadvertently entered in the record of the defendants as 1955 which is wrong and in effective on his rights and is liable to be corrected. Defendants were asked to correct his date of birth in their record, but they denied, hence the present suit.

Defendants were summoned wherein defendants through Representative appeared and contested the suit by filing written statement on 17.11.2014. The pleadings gave rise to the following issues.

ISSUES:

- 1. Whether plaintiff has got cause of action? OPP
- Whether the correct date of birth of plaintiff is 12.12.1961, but the same is in advertently entered in the record of defendants as 1955?
 OPP
- 3. Whethemilf the record of Nadra, date of birth of plaintiff is entered as 19557OPD

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(Syed Zah Civil Judicial Magis

T'C A

4. Whether plaintiff is entitled to decree as prayed for? OPP

5. Relief.

Plaintiff in order to prove his case produced and examined Khan Badshah Record Keeper Government Primary School Mian Kilay as PW-1, Muhammad Iqbal Secretary Union Council Tarkai as PW-2, Sarzamin as PW-4, plaintiff himself appeared as PW-3 and closed evidence.

In rebuttal Naveed Iqbal record Keeper/Representative of defendants/NADRA, Swabi appeared as DW-1 and closed evidence.

Arguments of the counsel for the plaintiff as well, counsel for defendants heard, record perused, where after my issues wise findings are as under:

ISSUE NO. 2 & 3:

As these issues are interconnected so I discussed them jointly.

As discussed above plaintiff is alleging that his correct date of birth is 12.12.1961, while in the record of the defendants the same La inadvertently entered as 1955. As per the statement of Record Keeper Government Primary School Mian Kilay, this witness has produced the Admission and withdrawal register of plaintiff which is Ex PW.1/1. This document reveals that the name of the plaintiff Qasim Khan is entered on serial No 325 dated 17.04.1967 and in front of his name in the next column his date of birth is entered is 12.12.1961. Similarly, as per School Leaving Certificate EX.PW.3/2, the date of birth of plaintiff is also entered as 12.12.1961. Perusal of the Computerized National Identity Card of the plaintiff which is Ex. PW.3/2 issued by the defendants/Nadra on 29.12.2001, it reveals that the plaintiff and the date of birth is entered as 1955. In rebuttal defendants/Nadra has braced produce any evidence that the correct date of birth of the plaintiff in 19 and Plaintiff has proved his case by producing the school record, being authority genuine and on which refinance can be placed. Therefore, issue No. 2.15

T.C. AD

(Syed Zahid Shah)
(Syed Zahid Shah)

Civil Judge-VI:
Judicial Magistrate Swab

man of

decided in favour of the plaintiff, issue No 3 is decided against defendants/Nadra.

ISSUES NO 1 & 4:

Plaintiff has proved his case; he has got a cause of action and is entitled to the decree as prayed for. Issues are decided in favour of the plaintiff.

RELIEF:

As per my foregoing discussion, the suit of the plaintiff succeeds which is hereby decreed as prayed for. With no order as to costs. Order announced. Consign.

Announced 14.03.2015

Michael O Syed Zahid Shah Civil Judge-VI, Swabi (Syed Zahid Si Civil Judge 4 Judicial Magistica

CERTIFICATE

Certified that this judgment consist of three (3) pages. Each page has been read over, checked and signed after making necessary correction therein.

Syed Zahid Shah Civil Judge-VI, Swabi (Syed Zahrd C Civil Jindga Judicial Magnatic

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<u>O.....14</u> 14.03.2015

Plaintiff Qusim Khan in person along with counsel present. Representative of the defendants/Nadra present. Arguments heard, record perused. Vide my detailed judgment which is placed on file, where in reasons are given, plaintiff proved his case through documentary & reliable evidence, the same is hereby decreed as prayed for. With no order as to costs. Order announced. Consign.

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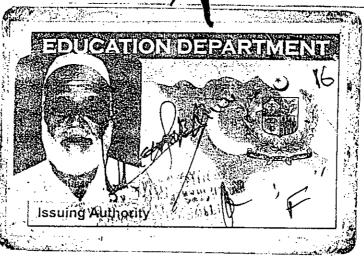
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THE GOVT OF KHYBER PAKHTUNKHWA PAKISTAN

بيدانش مر فيفيكيث

BIRTH CERTIFICATE

CRMS No. B162013-14-0492

FORM No

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APPLICANT'S NAME: SAFZAMEEN KHAN

APPLICANT'S CNIC NC1620209102905

RELATION:

OTHER

CHILD's NAME

FATHER'S NAME / NIC NO

MOTHER'S NAME / GENDER RELIGION [

NIC NO

QASIM

SUBHA

ISLAM MALE

KHAN

NAMDAR

130-26-538791

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GRAND FATHER'S NAME: WAZEER KHAN

GRAND FATHER'S CNIC NO

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غانه بيار باغ، محسيل درزة، سلع، سواني

ADDRESS VILLAGE: MIAN KILLI, POST OFFICE: CHARBAGH, TEHSIL, RAZAR, DISTRICT; SWABI

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VAKALATNÀMA

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MUKHTAR AHMAD MANERI, ADVOCATE HIGH COURT. Mob:0333-215-6006

> OFFICE# 24-A, NASIR MANSION, 2-RAILWAY ROAD, SHOBA BAZAAR, PESHAWAR.PH: OFF: 091-2214385 Email:mukhtaradvocate@yahoo.cc m