KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR AT CAMP COURT, SWAT

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
RASHIDA BANO ...MEMBER (Judicial)

Service Appeal No.1344/2022

Date of presentation of appeal.....14.09.2022
Dates of Hearing.....03.09.2024
Date of Decision.....03.09.2024

Farman Ali, Constable Special Force Belt No.3590 son of Fazal Mabood resident of Faiz Abad, Saidu Sharif, Tehsil Babozai, District Swat.
.....***Appellant***

Versus

1. **Inspector General of Police,** Khyber Pakhtunkhwa at Central Police Office, Peshawar.
2. **Regional Police Officer (RPO)** Malakand at Saidu Sharif, District Swat.
3. **District Police Officer (DPO)** Swat at Gulkada Saidu Sharif, District Swat.....(***Respondents***)

Present:
Mr. Qaiser Ali, Advocate.....For the appellant
Mr. Umair Azam, Additional Advocate General....Forrespondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED INACTION OF RESPONDENTS VIDE WHICH THEY WRONGLY ENTERED WRONG, INCORRECT DATE OF BIRTH OF THE APPELLANT IN SERVICE BOOK AND OTHER RELEVANT DOCUMENTS.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case, as per averments of appeal, are that appellant was appointed as Constable vide order dated 12.08.2009; that he was serving in the

Special Force of Police Department; that the alleged correct date of birth of the appellant is 05.10.1982 in the Computerized National Identity Card (CNIC) and his medical report while at the time of appointment, his date of birth was wrongly incorporated as 28.02.1971; that the appellant filed representation for correction of the same, however, the same was returned with no comments, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.

3. We have heard learned counsel for the appellant, learned counsel for private respondent and learned Additional Advocate General for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General, for respondents, controverted the same by supporting the impugned order.

5. From the record, it is evident that appellant was serving in the Police Department as Constable. The stance of the appellant is that his correct date of birth is October 5, 1982. However, the department's records incorrectly reflect this date as February 28, 1971. This discrepancy amounts to a substantial difference of eleven years between the two recorded dates. Upon detailed examination, it is evident that October 5, 1982, is consistently reflected as date of birth of the appellant across several official documents including his CNIC, the service

identity card issued by respondents, and the medical certificate prepared at the time of his appointment. We noted that the entry of February 28, 1971, in the appellant's service book stands isolated without corroboration from any other official documentation. Furthermore, it is observed that the service book mentions an age of "27 years" at the time of enlistment, aligning with the October 5, 1982 date and indicating a clerical error. According to General Financial Rule-116, corrections of clerical mistakes of this nature are permissible. The Rule is reproduced as under:

> *"116. Every person newly appointed to a service or a post under Government should at the time of the appointment declare the date of his birth by the Christian era with as far as possible confirmatory documentary evidence such as matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under para 117 should be recorded in the history of service, service book, or any other record that may be kept in respect of the Government servant's service under Government and once recorded, it cannot be altered, except in the case of a clerical error, without the previous orders of the Local Administration."*

6. General Financial Rule-116 mandates that any individual newly appointed to a role or position under the Government is required to declare their date of birth using the Christian era. This declaration should be supported by confirmatory documentary evidence wherever possible. Acceptable forms of evidence include but are not limited to, a matriculation certificate or a municipal birth certificate. In circumstances where the exact date is unknown, an approximate date may be provided. Upon determination, the actual or assumed date of birth must be documented in the individual's history of service, service book, or any other official record maintained for government service purposes. This date, once officially recorded, is not subject to alteration except to correct clerical errors. Once a date is recorded, it holds significant weight for all future references related to the individual's employment with the government. Any adjustments, even if clerical, require a rigorous validation process involving the Local Administration to ensure transparency and fairness. General Financial Rule-116 underscores the importance of accuracy and reliability in governmental personnel records. It establishes a clear protocol for the recording of birth dates while also allowing flexibility through approximate dates when exact information is unavailable. By stipulating conditions for modifying these records, it upholds administrative integrity and protects both the

government and its employees from disputes arising from erroneous records.

7. The principle of *res ipsa loquitur*, a doctrine originating from civil law, asserts that "the things speak for themselves." This doctrine is applied to scenarios where the facts of the case are sufficiently evident that they require minimal explanation.

8. In a case where negligence is evident, the principle of *res ipsa loquitur* operates and the appellant (in this case) does not have to prove anything as the thing (res) proves itself'. In such a case it is for the respondent to prove that he has taken care and done his duty to repel the charge of negligence.

9. In 2001 C L C 1048 titled "Qayyum Sheikh and another Versus Pak Suzuki Motor Company Limited, Karachi and 2 others" the honourable High Court of Sindh was pleased to find as under:

> *"Res ipsa loquitor Applicability---Pre-conditions---Res ipsa loquitur is which is applied where although the offending act is proved, the cause of negligence cannot be established by the plaintiff due to non-accessibility to such evidence or because such evidence is exclusively within the knowledge of the defendant---Rule of res ipsa loquitur applies when the occurrence suggests as a matter of reasonable inference, that it was the result of the negligence of the defendant or of someone for*

whose act or omission he is responsible; when the cause of occurrence is unknown and when the presumption of negligence raised by the occurrence is not rebutted by any explanation based on additional facts proved."

10. In the case of Mst. Kamina v. Al-Annin Goods Agency, reported as 1992 SCMR 1715, it was held that:-- .

"In the cases under Fatal Accidents Act, 1855 general rule is that burden of proof with regard to negligence is on plaintiff to prove negligence and not for the defendant to disprove, it but in cases where true cause of accident lies solely with the knowledge of defendants then this hardship is avoided by invoking the rule of res ipsa loquitur (the thing speaks for itself). In such circumstances where accident speaks for itself, it is sufficient for plaintiffs to prove the accident and nothing more. It is then for the defendants to persuade the Court that the accident arose not through their negligence. In support of this proposition, reference can be made to the case of Ursulina D'Lima and others v. Orient Airways Limited and another PLD 1960 Kar. 712 in which case-law on the subject is aptly discussed. It was held in that case that it could not be ruled out that plane met with the disaster for the aforesaid defect and the

defendants should have proved that there was no inherent defect in the machinery of the aircraft."

11. In the case Pakistan Steel Mills Corporation Ltd. v, Malik Abdul Habib reported as 1993 SCMR 848, it was held that:----

"Res Ipsa Loquitur means that the things speak for themselves. This doctrine applies firstly, when the thing that inflicted the damage was under the sole management and control of the defendant and secondly that occurrence is such that it would not have happened without negligence and thirdly, that there must be no evidence as to why or how the occurrence ~ took place. In such circumstances defendants have to persuade the Court that accident did not occur on' account of their negligence.

12. Clark and Lindsell have explained the doctrine in their book on Torts Edn.XI, at p.399 as follows:--

"If the result, in the circumstances in which he proves it, makes ii more probable than not that it was caused by the negligence of the defendant, the doctrine res ipsa loquitur is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability. The doctrine applies (1) when the occurrence suggests, as a matter of reasonable inference, that it was the result of the negligence of the defendant or of someone for whose acts or

omissions he is responsible, (2) the cause of the occurrence is unknown, and (3) the presumption of negligence raised by the occurrence is not rebutted by any explanation based on additional. facts proved."

13. In the case of P.I:A. v. Ursulina D.Lima reported as PLD 1966 Kar. 580, a Division Bench of High Court observed that:-

"It is as it ought to be, because the doctrine of res ipsa loquitur does not embody an entirely new and independent principle of law but is derived from the body of considerations that apply to cases of negligence.

The convenient and succinct formula, said Morris, L.J. possesses no magic qualities; nor has it any added virtue, other than that of brevity, merely because it is expressed in Latin. It is only a convenient label to apply to a set of circumstances in which plaintiff proves a case so as to call for a rebuttal from the defendant without having to allege and prove any specific act or omission on the part of the defendant."

The expression res ipsa loquitur means; the things speaks for themselves.

"The doctrine applies (1) when the thing that inflicted the damage was under the sole management and control of the defendant, or of some one for whom he is responsible or whom he

has a right to control; (2) the occurrence is such that it would not have happened without negligence. If these two conditions are satisfied it follows on a balance of probability, that the defendant, or the person for whom he is responsible, must have been negligent. *There is, however, a further negative condition; (3) there must be no evidence as to why or how the occurrence took place." Page 796 by Clark and Lindsell, 12th Edn.*

It is not necessary for shifting back the burden of proof or rebutting the presumption that the actual manner and cause of the accident be established by him who is taken to have been negligent. That would be asking for an impossibility when the necessary information is lacking. On the contrary shifts in the burden of proof follow the line of probabilities, therefore, the presumption can be dislodged by offering any plausible explanation which attributes the accident to some other cause than negligence Woods v. Duncan (1)

14. The court finds that the circumstances surrounding the appellant's date of birth sufficiently illustrate the authenticity of the date of birth appearing in several authoritative documents. In particular, the multiple entries in the service book, the medical certificate, and the corresponding date on the CNIC form a

compelling body of evidence that denotes a consistent date of birth. Thus, the principle of *res ipsa loquitur* supports the conclusion that the date of birth corroborated by multiple official sources should be given precedence over the sole disputed entry. Given the overwhelming evidence supporting the date of birth as reflected in various official documents and the absence of supporting documentation for the alternative date, we find that the date of birth noted in multiple records shall be regarded as the authentic record.

15. The Tribunal observes a consistent pattern in the documentation presented by the appellant. The corroboration of the date of birth across multiple official documents demonstrates a clear case of clerical error in the service book. The isolated entry of February 28, 1971, lacks any corroborative evidence and stands unsupported by any official record. The principle of *res ipsa loquitur* affirms that certain facts speak for themselves. The overwhelming consistency in the evidence supporting the appellant's claimed date of birth leads the court to conclude that this birth date should be recognized as the authentic record. We further observed that the significant body of evidence, including the appellant's medical certificate, CNIC and the service book, collectively reinforces the authenticity of the October 5, 1982 date of birth. In light of General Financial Rule-116, the court emphasizes that clerical errors can and should be corrected under appropriate circumstances. It underscores the necessity of

administrative accuracy in maintaining personnel records. We also observed that the conditions for adjusting the recorded date of birth have been met, as substantial documentary evidence supports the appellant's claim and the department's contention contain an unsubstantiated error. Based on the preponderance of evidence, we hold that the correct date of birth of the appellant is October 5, 1982. The Tribunal prioritizes a fair resolution that respects the integrity of public service records while safeguarding the rights of employees against erroneous documentation. The decision aligns with the overarching goal to uphold accuracy and reliability in government personnel records, as established by the applicable regulations

16. In view of the above, instant service appeal is accepted with the direction that the date of birth of the appellant shall be considered as 28.02.1982, which is corroborated by entries found in all official documents. Costs shall follow the event. Consign.

17. Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 3rd day of September, 2024.

KALIM ARSHAD KHAN
Chairman
Camp Court, Swat

RASHIDA BANO
Member (Judicial)
Camp Court, Swat

Mutazem Shah