

ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Intra Court Appeal No. 341 of 2021

Dilshad

Versus

International Islamic University through its Rector, Islamabad and 2 others

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
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	09.08.2021	Raja Saif ur Rehman, Advocate for the Appellant.
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TARIQ MEHMOOD JAHANGIRI, J:

Through the instant Intra Court Appeal, the appellant has assailed the Judgment dated 23.06.2021, passed in writ petition No. 3646 of 2020, whereby, the learned Single Judge-in-Chambers has dismissed the writ petition filed by the appellant.

02. Brief facts of the case are that the appellant/petitioner was an employee of International Islamic University. She was appointed on contract basis as a waitress on deceased employee quota; subsequently, her services were regularized. In the Service Book / Bio Data submitted to the University her date of birth was mentioned as 1961.

Subsequently, she applied for correction of her date of birth without any avail. The appellant filed a suit for correction of her date of birth before the Civil Court in Bannu against NADRA which was dismissed on 10.02.2018; however, appeal was allowed vide judgment dated 18.04.2018. She again applied to the University for correction of her date of birth which was allowed vide office order dated 27.07.2020. Subsequently, said order was withdrawn on 17.08.2020.

03. The appellant filed writ petition challenging the order dated 17.08.2020 and prayed for correction of her date of birth in the record of respondent university from 1961 to 1967; writ petition filed by her was dismissed by learned Single Judge-in-Chambers vide impugned judgment dated 23.06.2021, hence the instant intra court appeal.

04. Learned counsel for the appellant contends that learned Single Judge-in-Chambers while rendering the impugned judgment at para 6 erroneously mentioned that the appellant failed to point out any

violation of law; neither any show cause notice was issued nor any opportunity of personal hearing was provided to the appellant.

05. That the learned Single Judge-in-Chambers while rendering the impugned judgment inadvertently did not notice the fact that principle of natural justice has been violated because letter dated 27.07.2020 was withdrawn in violation of the principle of *Audi Alteram Partem*; the impugned judgment has been passed in violation of principle of locus poenitentiae and dictums laid down by the Hon'ble Supreme Court of Pakistan and has prayed for its setting aside.

06. Arguments heard, record perused.

07. Respondent University has submitted comments in writ petition and has also annexed relevant documents and service record of the appellant; in bio data form submitted by the appellant at the time of appointment, the date of birth is mentioned as 1961; said bio data form has been signed by the appellant herself; CNIC issued by NADRA on 27.07.2012 also shows date of

birth as 1961; it is mentioned in the comments filed by University/respondent that at the time of joining, the appellant has provided school leaving certificate in which her date of birth was mentioned as 1961 even in the Service Book of the appellant, her date of birth is mentioned as 1961.

08. It is admitted that the appellant herself mentioned date of birth as 1961 and obtained job on the basis of said date of birth in year 2010 and at the time of her retirement, she has requested for the correction of her date of birth.

09. She has applied for correction of date of birth for first time in year 2018 and also filed a suit in the Court of Civil Judge Bannu which was dismissed; the appellant filed an appeal which was allowed vide judgment dated 18.04.2018 by the Court of Additional District Judge, Bannu.

10. It is important to mention that the appellant did not implead her employer i.e. respondent/IIUI as defendant in the suit which was filed in the Court of Civil Judge, Bannu; the appellant also did not file any

petition for execution of judgment/decreed dated 18.04.2018 passed by Additional District Judge, Bannu.

11. The Establishment Division, Cabinet Secretariat, Government of Pakistan vide Notification dated 31.07.2000 has made the following new rule after rule 12 in Civil Servant (Appointment, Promotion and Transfer) Rules, 1973 which is reproduced as under:

"12-A. Alteration in the date of birth.- The date of birth once recorded at the time of joining government service shall be final and thereafter no alteration of the date of birth of a civil servant shall be permissible."

12. Terms and conditions of service of the IIUI employees do not vest in the Federal Government. The rules and regulations of the International Islamic University, Islamabad are not regulated by any statute or statutory rules. This Court in a case titled as ***"Dr. Shamaila Sajjad Vs. HEC and others"*** (W.P No. 395 of 2017) (the case

pertained to International Islamic University) observed that the rules and regulations of International Islamic University are non-statutory. Similar observations were made in case reported as "**International Islamic University through President and 3 others v. Dr. Shamim Tariq**" (2018 PLC (C.S) Note 201).

13. It is trite that a constitutional petition under Article 199 of the Constitution would only be competent, if the Rules/Regulations governing the terms and conditions of service of the employees of the organization in question, are statutory or where the act or proceedings against which the appellant voices his/her grievance are in violation of the statutory Rules/Regulations.

14. As far as argument of learned counsel for the appellant that on the principle of locus poenitentiae, order dated 17.08.2020, was liable to be set aside is concerned, it is well settled principle of law that the principle of locus poenitentiae can be invoked only in respect of order which is legal and not in respect of an order which has been obtained

on the basis of false and incorrect facts / information. Reference in this regard may be made to the following case laws:

- (i) In the case of **Senate through Chairman Vs. Shahiq Ahmed Khan (2016 SCMR 460)**, it has been held as follows:-

"we are constrained to observe that the principle is meant to condone a bona fide mistake and not to be pressed into service for reaping the benefit of any fraud or to camouflage the same".

- (ii) In the case of **Muhammad Sidiq through L.Rs. Vs. Punjab Service Tribunal, Lahore and others" (2007 SCMR 318)**, it has been held as follows:-

"it is a settled proposition of law that if the order is illegal then perpetual rights cannot be gained on the basis of an illegal order and in such situation principle of locus poenitentiae is not attracted as the law laid down by this Court in Abdul Haque Indhar's case 2000 SCMR 907".

- (iii) In the case of **Nazir Ahmad Panhwar Vs. Government of Sindh through Chief Secretary,**

Sindh and others (2005 SCMR**1814)**, it has been held as follows:-

"The contention on behalf of the petitioner that the order, dated 24.11.1997 had been acted upon, therefore, a vested right had been conferred on the petitioner to continue on the post of Director (Administration) in Sindh Seed Corporation, in view of the principle of locus poenitentiae is misconceived as this principle can be invoked only in respect of an order which is legal and not in respect of an order which is contrary to and in contravention of any provision of law or the rules made thereunder or a settled provision of law. If any authority is required in support of above proposition the same is available from the judgments in the cases of (i) The Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalaluddin PLD 1992 SC 207 and (ii) Abdul Haque Indhar and others v. Province of Sindh through Secretary Forest, Fisheries and Livestock Department, . Karachi and 3 others 2000 SCMR 907".

- (iv) In the case of **Shakeel Ahmad Zaidi and others Vs. Secretary,**

**Higher Education, Government
of Punjab, Lahore and others
(2021 SCMR 474)**, it has been

held as follows:-

"We are therefore clear in our minds that only where lawful orders have been passed by an authority having the power to do so under the relevant law and a person bona fide receives a benefit under the said law without any positive action on his part, such beneficiary can claim a right under the exception to the principle of locus-poenitentiae and claim that the benefit bona fide received by him by virtue of an a lawful order passed by the competent authority (which at the relevant time and for its duration till its withdrawal was lawfully passed by an authority competent to pass such order) cannot subsequently be recovered by virtue of the protection available under the exception to the aforesaid rule".

- (v) In the case of **Engineer in Chief
Branch through Ministry of
Defence, Rawalpindi and others
Vs. Jallal ud Din (PLD 1992 SC
207)**, wherein the relief was

granted in a very structured manner and it was clearly and categorically held that:-

"locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. The appellants when came to know that on the basis of incorrect letter, the respondent was granted Grade-II, they withdrew the said letter. The principle of locus poenitentiae would not apply in this case."

- (vi) In the case of **Muhammad Feroz Vs. Deputy District Officer (Education) and others (2005 SCMR 1490)**, where a person was mistakenly appointed as PTC Teacher against a post for which he lacked the requisite qualification this Court held as follows:-

"We are not persuaded to agree with learned Advocate Supreme Court on behalf of the petitioner that after

having appointed the service of the petitioner could not have been terminated on the principle of locus poenitentiae because the said principle can only be pressed into service to protect the legal rights based on lawful orders."

- (vii) In the case of **Mst. Sameena Ashfaq Syed Amin AL Vs. Government of Pakistan through Ministry of Finance and 3 others (2018 CLD 475 [Lahore])**, it has been held as follows:-

"the principle of locus poenitentiae of receding back the steps is available only where an action or representation has been made erroneously".

15. Regarding the change of date of birth in service record, the law/principles have been laid down by the Hon'ble Supreme Court of Pakistan which are as follows:

- (i) *In the case of **Jamal Khan Jaffar v. Government of Balochistan (1998 SCMR 1302)**, the Hon'ble Supreme Court of Pakistan held that:*

"the service book of a government servant was the most authentic record with regard to the entries of his date of birth." (**Emphasis supplied**)

(ii) In the case of **Iqbal Haider v. Federation of Pakistan** (1998 **SCMR 1494**), the Hon'ble Supreme Court of Pakistan held that:

"authenticity of a date of birth recorded in the documents cannot be changed belatedly, and that the rule that a government employee cannot make an application for a change in his date of birth after two years of his joining the service." (**Emphasis supplied**)

(iii) In the case of **Niaz Akbar v. Atomic Energy Commission** (2002 PLC (C.S.) 970):

"the petitioner who was an employee in the Pakistan Atomic Energy Commission sought to change his date of birth from 13.06.1964 to 11.03.1967. The petitioner had been able to get a decree in his favour from a civil court regarding the change in his date of birth. The Commission at first changed the petitioner's date of birth, but on reconsideration of the matter, withdrew the change. The

petitioner's departmental appeal as well as his appeal before the Service Tribunal was dismissed. It was held by the Hon'ble Supreme Court that sanctity would be given to the petitioner's date of birth entered at the time of his entry into service. Furthermore, it was held that the petitioner's date of birth entered at the time of his entry into service could not be changed on the basis of decree of a civil court passed in proceedings in which the Commission was not a party."
(Emphasis supplied)

- (iv) In the case of **Khalil Ahmad Siddiqui v. Pakistan, through Secretary Interior (2003 PLC (C.S.) 696)**, it was held as follows:-

"It, is a matter of fact, has become a common phenomenon and usual practice that the Government Servants if and when they come at the verge of their retirement, they question their dates of birth just to prolong their tenure and enjoy the perks and privileges of their service for a few more years at the cost of others. This idea never creeps across their mind earlier and in case it does, it is never taken seriously and

pursued to the desired end. It is clearly and squarely a case of estoppel of conduct which will certainly bar and barricade the petitioner from seeking the correction asked for at least at such a belated stage".

- (v) In the case of **Muhammad Tariq v. University of Peshawar (2004 PLC (C.S.) 1162)**, the Hon'ble Supreme Court of Pakistan held that:

"the plea of a civil servant with regard to a wrong entry of date of birth, when raised after remaining in service for a long period, would not carry any weight. Furthermore, it was held that civil servant could not make an application for a change in his date of birth after two years of joining service. Authenticity of a date of birth recorded in documents, when the civil servant joined service, could not be changed belatedly."(Emphasis supplied)

- (vi) In the case of **Qamar-ud-Din v. Pakistan through Secretary Establishment Division (2007 SCMR 66)** the Hon'ble' Supreme

Court dismissed the petitioner's petition against the judgment of Federal Service Tribunal turning down his appeal seeking the correction of his date of birth from 01.04.1946 to 01.04.1948. In the said judgment, the Hon'ble Supreme Court of Pakistan observed as follows:-

"We may observe that lately a tendency has developed whereby unwarranted claims, attempting to show error in "date of birth" are asserted towards retiring age by fabricating or manipulating documents in that behalf. Obviously such practice must be discouraged and effectively curbed".

*(vii) In the case of **Ahmed Khan Dehpal v. Government of Balochistan** (2013 SCMR 759), the Hon'ble Supreme Court of Pakistan held that the petitioner, who was serving as Chief Engineer in Irrigation Department, Government of Balochistan, had obtained a declaratory decree from a civil court to the effect that his*

actual date of birth is 02.02.1958 instead of 02.02.1953, as recorded in his secondary school certificate as well as in his service book. His plea for the correction of his date of birth before the Secretary, Irrigation Department as well as the Service Tribunal, was turned down. The Hon'ble' Supreme Court dismissed the petitioner's petition with the following observations:-

"The idea to have the date of birth altered appears to be an off shoot of an afterthought. It, as a matter of fact, has become a common practice with civil servants to file suits for the correction of their dates of birth with they come to the verge of their retirement just to prolong the tenure for enjoying the perks and privileges for a few more years at the costs of the others." (Emphasis supplied)

16. Intra-Court Appeal can be filed when the impugned judgment of the Single Judge-in-Chambers is shown to have been delivered against the provisions of law and is the result of conclusions, which are contrary to any specific provision of law or is the result of

misreading, non-reading or same has caused miscarriage of justice, or mistakes of like nature; liable to be corrected by the Division Bench, otherwise, the judgment could not be upset in the Intra-Court Appeal.

17. In view of foregoing discussion, instant Intra Court Appeal is not maintainable, hence the same is **dismissed in limine** being meritless.

(MIANGUL HASSAN AURANGZEB) (TARIQ MEHMOOD JAHANGIRI)
JUDGE JUDGE