JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

F.A.O. NO.05 OF 2022.

MS. HINA SHAHID

Versus

FEDERAL PUBLIC SERVICE COMMISSION.

Appellant by	**:**	**M/s Kamran Arshad and Asad Ullah Taimur, Advocates.**
Respondent by	**:**	**Rana Imran Farooq, AAG.** **Haroon Rashid, Deputy Director, FPSC.**
Date of hearing	**:**	**30.03.2022.**

SAMAN RAFAT IMTIAZ, J.:- The instant first appeal has been filed by the Appellant under Section 7(3)(d) of the Federal Public Service Commission Ordinance, 1977 against the Order dated 14.01.2022 **(Impugned Order)** passed by the Respondent, dismissing the Review Petition filed by the Appellant against the Order dated 08.12.2021 passed in respect of the representation filed by the Appellant.

2. Succinctly stated, the facts of the case as per the Memo of Appeal are that the Appellant was a candidate in the competitive examination of CSS in the year 2019. The date of birth mentioned by her in the application form was 04.12.1990 as per her matriculation certificate issued by the Board of Intermediate and Secondary Education, Rawalpindi. The Appellant later on filed a Suit for Declaration before the Civil Court Jhelum to correct her date of birth to 04.02.1991 as contained in the birth record at the respective municipal committees. The said suit was decreed on 27.08.2020. Thereafter, the Appellant applied for competitive examination in the year 2021 on the basis of the Court decree and appeared in the examination but her result was withheld on 01.10.2021 due to difference of date of birth in her earlier application and the recent application. The Appellant filed representation against the said order before the Respondent, however, the same was rejected after conducting personal hearing on 02.12.2021 vide order dated 08.12.2021. Feeling aggrieved of the said order, the Appellant filed Review

Petition before the Respondent on 17.12.2021 but her Review Petition was also dismissed vide Impugned Order dated 14.01.2022.

3. Learned counsel for the Appellant, *inter alia*, contended that Impugned Order has been passed without appreciating the fact that the Appellant has decree of competent Court of law regarding change of date of birth; that Impugned Order is against the law and facts of the case; that in similar circumstances in the unreported case bearing FAO No.02/2014, the Honorable Lahore High Court, Multan Bench, Multan set aside the decision of FPSC passed in representation and review petition on the same ground of correction of date of birth.

4. Learned AAG controverted the arguments of learned counsel for the Appellant and supported the Impugned Order as being lawful and justified. Learned AAG further contended that the judgment of the Honorable Lahore High Court, Multan Bench, Multan cited by the learned counsel for the Appellant was set aside by the Honorable Supreme Court of Pakistan. Even otherwise the main consideration in such case was that the rules at the time were not Gazetted whereas the CSS-Competitive Examination Rules, 2019 which are relevant for the instant case are Gazetted.

5. I have heard learned counsels for the parties and perused the record.

6. In a nutshell the controversy between the parties is whether the Respondent is liable to accept the date of birth of the Appellant as decreed by the learned Civil Judge 1st Class, Jhelum or whether the Appellant is bound by the date of birth given to the Respondent at the time of the first CSS Exam, which was as per her matric certificate.

7. The learned AAG has relied upon Rule 7 Sub-Rule 3 of the CSS-Competitive Examination Rules 2019, which for convenience is reproduced as under:-

> *"7.* ***Date of Birth.-*** *(1)* ……..
>
> *(2)* ……..
>
> *(3) Once a date of birth has been claimed by a candidate and accepted by the Commission for the purpose of admission to a competitive*

> *examination, no change shall be allowed at a subsequent examination or selection."*

8. Learned counsel for the Appellant cited unreported judgment of Lahore High Court, Multan Bench, Multan, wherein the Appellant in such case was allowed to change her date of birth, however, learned AAG pointed out that such ruling was set aside by the Honourable Supreme Court and has also provided attested copy of the order dated 16.03.2015 passed by Honourable Supreme Court, whereby aforementioned order of Lahore High Court, Multan Bench, Multan was set aside.

9. More importantly, the learned AAG has referred to another unreported judgment of the Honourable Supreme Court dated 16.09.2004 passed in Civil Petition No.1471/2002, wherein a similar issue arose. The Honourable Supreme Court in such case while considering Rule 4, Sub-Rule (vi) of the Federal Public Service Commission (Competitive Examination) Rules 2000, (which is in *pari materia* with Rule 7 Sub-Rule 3 of CSS-Competitive Examination Rules 2019) came to the conclusion that the said rule carries logic. The august Court explained that mostly candidates appearing before Public Service Commission appear in numerous examinations after graduation, meaning thereby that they have a large span of time to correct their date of birth if there is any mistake. If someone fails to do so and only resorts the same after failing in CSS Exam, it would appear to be an afterthought. In view of the foregoing, the Honourable Supreme Court dismissed the petition and refused to grant leave to appeal.

10. Similarly, Peshawar High Court in the case of *Muhammad Jalal ud Din vs. FOP*, 2018 YLR 2196 while considering Rule 4 of the CSS Rules 2015 took note of several unreported judgments of Honourable Supreme Court on this issue and the relevant paragraphs are noted here-in-below:-

> *"9. The August Supreme Court of Pakistan in C.P. No.2184 of 2001 decided on 6.11.2002 while discussing the same proposition held that "the respondent admittedly appeared in the competitive examination twice in 1994 and 1996 conducted by the Commission, as such on the basis of the aforesaid rules,* ***he could not have claimed his new date of birth in the subsequent examination****". Similar proposition regarding the same issue was discussed in C.P. No.1471 of 2002 decided on 16.9.2004.* ***The Apex Court has deprecated such practice of***

> ***the candidates in maneuvering changes in date of birth to achieve further chances.*** *In Civil Appeal No.86 of 2015 decided on 16.3.2015, the Apex Court held the Examination Rules as valid and applicable to the candidate applying for the examination.[Emphasis Added]*
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> *10. Thus, looking on the touch stone of the judgment of the Apex Court that has upheld the rules for the competitive examination about the change in date of birth, we find that the petitioner's case is fit on all fours on the precedent cases of the Apex Court, thus his candidature was rightly rejected".*

11. In view of aforementioned Honourable Supreme Court pronouncements, which are binding upon me by virtue of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973, there is no scope for further discussion as the matter stands settled. Therefore, I hold that in view of Rule 7, Sub-Rule 3 of the CSS-Competitive Examination Rules 2019, the Appellant's candidature was rightly rejected by the Respondent.

12. In view of above, this appeal has no merit, therefore, the same is **dismissed.**

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court 16th of May, 2022.

JUDGE

R.Anjam