


Order...06
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 26.09.2023

parte. Moreover, counsel for the plaintiff sought adjournment in respect of arguing the maintainability of the case.

File to come up for arguments on maintainability of the instant suit on 03.10.2023.


Sami Ullah
 Civil Judge-I,
 Orakzai (at Baber Mela)

Order...07
 03.10.2023


Present:

Plaintiff in person along with counsel.

Defendants absent.

Today the case was fixed for arguments on maintainability and counsel for the plaintiff argued the same.

File to come up for order on maintainability of the instant suit on 06.10.2023.


Sami Ullah
 Civil Judge-I,
 Orakzai (at Baber Mela)

Order...08
 06.10.2023

Plaintiff in person present.

1. This order is intended to dispose of the fate of the case owing to the jurisdiction in the instant case.
2. Arguments over the score of maintainability have already been heard and record of the case file has been gone through.
3. Perusal of the record shows that the plaintiff has filed the instant suit for declaration and perpetual cum mandatory injunction against government department. The plaintiff has contended that his correct date.

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Sami Ullah
 Civil Judge/JM-I
 Orakzai at (Babar Mela)

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of birth is 1970 as mentioned in his CNIC which has wrongly been mentioned by the defendants as 1963 in his service record.

4. Perusal of case further reveals that the plaintiff remained as a government servant for a considerable period of time as constable in District Police, Orakzai, and has retired from service up on superannuation. Now the plaintiff has filed the instant declaratory suit for correction of his date of birth in service record after his retirement.

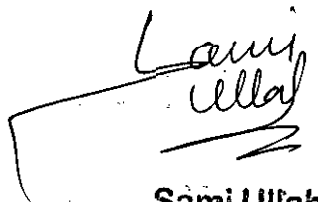
5. After the institution of the instant case the defendants were summoned wherein only defendant no.2 appeared through representative without submitting any authority letter and remained absent up till now, hence defendant No.2 is placed and proceeded ex-parte today.

6. This court vide order dated 15.09.2023 deemed it appropriate to hear arguments on the score of maintainability of the instant suit owing to jurisdiction as the plaintiff has sought correction in his service book/record.

7. I have already heard the arguments of the leaned counsel for the plaintiff and have carefully perused the record with his valuable assistance.

8. Having been heard arguments, it is evident from case file that plaintiff is seeking declaration, perpetual and mandatory injunctions regarding correction of his date of birth in his service record which relates to services matter. Article 212 of the Constitution of Islamic Republic of Pakistan provides for establishment of Administrative Courts and Tribunals by appropriate Legislature to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters etc. Sub-Article (2) of the ibid Article provides that where any Administrative Court or Tribunal is established under clause (1);

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Sami Ullah
Civil Judge/JM-I
Orakzai at (Babar Mela)

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"no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends."

9. Likewise, section 12-A of civil servants (appointment, promotion and transfer) rules, 1973 would contain;

"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 in the date of birth of a civil servant shall be permissible"

10. Question may arise as to whether correction of date of birth does fall within the definition of terms and conditions of service. This question has been dilated upon by the Hon'ble Supreme Court of Pakistan in its Judgment reported as 2003 SCMR page 444 and has held that:-

"---Age of Civil Servant---Essential term and conditions of service---Date of birth of Civil Servant is the sheet anchor for determining his superannuation on which date he is to bid farewell to the Department thus it is pivotal and most crucial and essential term and conditions of his Service".

11. Taking wisdom from Judgment of the apex Court (supra), date of birth of civil servant does fall within ambit of terms and conditions of service. Now the question would be as to whether a suit for correction of date of birth is maintainable in civil court. This question has also been discussed by the apex Court in its Judgment reported as 2004 PLC (CS) page 1162. Relevant portion of the Judgment reads as:-

"----Suit by Civil Servant for correction of date of birth--- Maintainability---Plea raised with regard to age would fall within Jurisdiction of Service Tribunal. Such suit would not

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Lamy Ullah
Sami Ullah
Civil Judge/JM-I
Orakzai at (Babar Mela)

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be maintainable in view of the bar contained in Article 212 of the Constitution”.


12. Since, correction of date of birth falls within terms and conditions of service of civil servant and a special tribunal (Service Tribunal) for dealing such matters has been established in the province through an Act of the legislature therefore, a suit for correction of date of birth of a civil servant is not maintainable in Civil Court.

13. As the matter falls within exclusive Jurisdiction of Service Tribunal hence, this Court has got no jurisdiction to entertain the instant suit. Resultantly, original plaint be returned to the plaintiff for its presentation to the Court/forum having jurisdiction in the matter with an endorsement of its return with red ink. Copy of plaint be placed on case file.

14. File be consigned to record room after necessary completion and compilation.

Announced

06.10.2023


Sami Ullah
Civil Judge-I,
Orakzai at Baber Mela