

IN THE COURT OF SHABEER AHMAD,
CIVIL JUDGE-II, TEHSIL COURTS, KALAYA, ORAKZAI

Civil Suit No. 51/1 of 2022
Date of Original Institution: 20.06.2022
Date of Transfer in: 01.07.2022
Date of Decision: 26.08.2022

Syed Amin Hussain son of Syed Zamin Hussain, resident of
Qaum Bar Muhammad Khel, Tappa Baba Nawasi, Abu Dag, Tehsil
Lower, District: Orakzai.

.....(Plaintiff)

VERSUS

1. **Chairman, NADRA, Islamabad.**
2. **Director, General NADRA KPK Peshawar.**
3. **Assistant Director, NADRA District Orakzai.**

.....(Defendants)

**SUIT FOR DECLARATION -CUM- PERPETUAL AND
MANDATORY INJUNCTION**

JUDGMENT

1. Brief facts of the case in hand are that the plaintiff Syed Amin Hussain has brought the instant suit for declaration, permanent and mandatory injunction against the defendants, referred hereinabove, seeking declaration therein that correct date of birth of plaintiff is 1979, according to Service Record and Medical Certificate while it has been wrongly mentioned as 1969 in his CNIC by the defendants, which is wrong, ineffective upon the rights of the plaintiff and liable to correction. That the plaintiff was recruited as a chowkidar in Government Primary School, Abu Dag, Lower Orakzai in the year 2007 and he is serving there

Shabeer Ahmad
Shabeer Ahmad
Civil Judge/JM-II
26/08/2022
Orakzai (Kalaya)

for almost 15 years. That the defendants were asked time and again to do the aforesaid correction but they refused, hence, the present suit;

2. Divergent pleadings of the parties were reduced into the following issues;

Issues:

1. Whether the plaintiff has got cause of action?
2. Whether the plaintiff is estopped to sue?
3. Whether the suit of the plaintiff is within time?
4. Whether the correct date of birth of the plaintiff as per his service and medical record is 1979, while it has been wrongly entered as, 1969 in his CNIC by the defendants?
5. Whether the plaintiff is entitled to the decree as prayed for?
6. Relief?

Issue wise findings of this court are as under: -

Issue No. 02:

The defendants in their written statement raised the objection that the plaintiff is estopped to sue but later on failed to prove the same, hence, the issue is decided in negative.

Issue No. 03:

The defendants in their written statements raised their objection that suit of the plaintiff is time barred but I am the opinion that as per Article 120 of the Limitation Act, 1908 there is a period of 06 years for the institution of such like suits but the aforesaid


Shahzeer Ahmad
21/08/2024
Orakzai et (Kalaya)

Limitation Act, 1908 is extended to the erstwhile FATA on 31/05/2018 through the 25th constitutional amendment and the same has become operational from the aforesaid date while the instant suit has been filed on 20.06.2022. Thus, the same is well within time. The issue is decided in positive.

Issue No. 04:

The plaintiff alleged in his plaint that the correct date of birth of the plaintiff is 1979, according to his service and medical record whereas, defendants have wrongly entered the same as 1969, which is wrong, ineffective upon the rights of the plaintiff and liable to correction. That the defendants were asked time and again to do the aforesaid correction but they refused, hence, the present suit;

The plaintiff produced witnesses in whom Mr. Syed Amin Hussain, the plaintiff himself, appeared as PW-01, who produced his CNIC which is exhibited as Ex.PW-1/1, that my correct date of birth according to service record is 1979 which is also rightly mentioned in my medical certificate, service book and office order. That plaintiff is working as chowkidar in Government Primary School, Abu Dag and since plaintiff is a special person he also has a CNIC of special person but the date of birth wrongly mentioned as 1969 which is liable

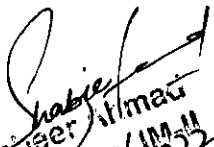
Shahid
Shahid Ahmad
Civil Judge II
Orat 26/08/2022

to correction. Since the plaintiff was recruited in the Education Department in the year 2007 and he has been serving for almost 15 years. He lastly prayed for decree the suit. During cross examination nothing tangible extracted out of him.

Mr. Tajamal Hussain, the cousin of the plaintiff, appeared as PW-02. He produced his CNIC which is exhibited as Ex. PW-2/1 and further fully narrated the same story as in the plaint. He was cross examined but nothing tangible have been extracted out of him during cross examination.

Further Syed Imam son of Zamin Hussain, brother of the plaintiff appeared as PW-03. He produced his CNIC which is exhibited as Ex. PW-3/1. He further stated that plaintiff is approximately 14 years younger than me and further supported the stance of the plaintiff as narrated in the plaint.

Further, Mr. Taj Muhammad Khan son of Aman Ullah Khan, the Record Keeper for District Education Officer, Orakzai, appeared as PW-04. He produced his CNIC which is exhibited as Ex. PW-4/1. He further stated that plaintiff serving as a chowkidar in Education Department and in Education Record date of birth of the plaintiff is mentioned as 1979. That in medical certificate date of birth of the plaintiff is also


Shabeer Ahmad
Civil Judge (IMM)
Orakzai (Kalaya)
28/08/2022

mentioned as 1979. He produced copy of Medical Certificate, Service Book and Office Order (original seen and returned) of the plaintiff which are exhibited as Ex. PW-4/2, Ex. PW-4/3 and Ex. PW-4/4 wherein the date of birth of the plaintiff as 1979. During cross examination he admitted that the plaintiff is illiterate person and at the time of recruitment the age of the plaintiff was 28 years.

In order to counter the claim of the plaintiff, the defendants produced only one witness, namely Mr. Syed Farhat Abbas, the representative of the defendants who appeared as DW-1, who produced CNIC processing detail form of the plaintiff which is Ex-DW-1/1 and Family tree of the plaintiff which is Ex-DW-1/2. But during cross examination, he admitted that the documents produced by the plaintiff which are already exhibited are computer printed which do not need any stamp or signatures.

Arguments heard and record perused.

After hearing of arguments and perusal of record I am of the opinion that the plaintiff mainly relies on his service book and medical certificate in which correct date of birth of the plaintiff is mentioned as 1979. The aforesaid documents are public documents and presumption of truth is attached to it. Thus, the plaintiff

Shahid
Shahid A. Farhat
Civil Judge (Jr.)
Orakzai
26/08/2022

established his claim through cogent and reliable evidence, therefore, the issue is decided in positive.

Issue No. 01 &02:

Both these issues are interlinked, hence, taken together for discussion.

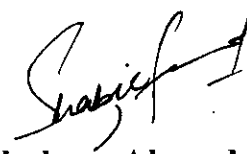
As sequel to my findings on issue No. 4, the plaintiff has got a cause of action and therefore entitled to the decree as prayed for. Thus, both these issues are decided in positive.

RELIEF:

As sequel to my above issue wise findings, the suit of the plaintiff is hereby decreed as prayed for. Defendants are directed to correct the date of birth of the plaintiff as 1979.

File be consigned to the District Record Room, Orakzai after its completion and compilation.

Announced
26.08.2022



Shabeer Ahmad
Civil Judge-II,
Tehsil Court, Kalaya, Orakzai

CERTIFICATE

Certified that this judgment consists of six (06) pages, each has been checked, corrected where necessary and signed by me.



Shabeer Ahmad
Civil Judge-II,
Tehsil Court, Kalaya, Orakzai