SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, CJ.
Raza Ali Khan, J.

Civil Appeal No.84 of 2021
(PLA filed on 22.03.2021)

Khawaja Aamir Ahmed, Advocate High Court of AJ&K, Member Central Bar Association, Old Secretariat, Muzaffarabad.

….. APPELLANT

VERSUS

1. Azad Government of the State of Jammu and Kashmir through its Chief Secretary having his office at New Secretariat, Muzaffarabad.

2. President of AJ&K through Secretary to President having his office at President Secretariat, Muzaffarabad.

3. Justice Azhar Saleem Babar (impugned) Acting Chief Justice up to 22.03.2021 of High Court of Azad Jammu and Kashmir, Muzaffarabad.

4. Department of Law, Justice, Parliamentary Affairs and Human Rights through its Secretary having his office at Lower Chatter, Muzaffarabad.

5. Secretary Law, Justice and Parliamentary Affairs of Azad Jammu and Kashmir having his office at New Secretariat Complex, Muzaffarabad.

6. Registrar, High Court/Shariat Appellate Bench of AJ&K High Court having his office at High Court Building, Muzaffarabad.

7. Accountant General of AJ&K, Sathra Hills, Muzaffarabad.

…. RESPONDENTS

[On appeal from the judgment of the High Court dated 19.03.2021 in writ petition No. 691 of 2021]

FOR THE APPELLANT: Mr. Fayyaz Ahmed Janjua, Advocate.

FOR THE RESPONDENTS: Raja Ayaz Ahmed, Assistant Advocate-General, Sardar M. R. Khan and Raja Amjad Ali Khan, Advocates.

Date of hearing: 05.07.2021

JUDGMENT

Raja Saeed Akram Khan, CJ.– By this judgment, we intend to decide the titled appeal by leave of the Court, which is directed against the judgment of the High Court of Azad Jammu and Kashmir dated 19.03.2021, passed in writ petition No.691 of 2021 filed by the appellant, herein.

2. The dispute relates to the retirement of Mr. Justice ® Azhar Saleem Babar (private respondent), as Acting Chief Justice of the High Court of Azad

Jammu and Kashmir. His date of birth, according to the Computerized National Identity Card (CNIC) and salary slips as generated in the office of the Accountant General, is recorded as 23.02.1959, whereas, in all the other documents including Matriculation Certificate, Annual Confidential Reports (ACRs), Advocacy License, Pleader-ship License etc., the date of birth is conjointly entered as 23.03.1959. The Government issued the notification of his retirement on 23.02.2021 having its effect from 22.03.2021, on the basis of date of birth incorporated in the Matriculation Certificate. The appellant, a Member of Central Bar Association, Muzaffarabad and practicing lawyer, filed a writ petition before the High Court, on 24.02.2021, with the prayer to amend amending the impugned notification and retire the private respondent with effect from 23.02.2021, the date of birth recorded in the CNIC and the salary slips. The learned High Court, after necessary proceedings, not only dismissed the writ petition through the impugned judgment but also modified the notification of

retirement while declaring the private respondent the Chief Justice of High Court, instead of the Acting Chief Justice, hence, this appeal by leave of the Court.

3. The contention of Mr. Fayyaz Ahmed Janjua, Advocate, the learned counsel appearing on behalf of the appellant is that the impugned judgment of the High Court is packed with constitutional and legal infirmities. The direction issued in the impugned judgment, regarding the retirement of the private respondent as the Chief Justice of the High Court, amounts to amend the Constitution, whereas, a specific mode has been provided for appointment of Chief Justice of the High Court, hence, the learned Judge in the High Court, fell in grave error of law, while converting the notification of retirement of private respondent as a Judge High Court to the Chief Justice High Court, whereas, the High Court does not enjoy powers like the Supreme Court to issue such directions, orders as may be necessary for doing complete justice. The learned counsel further emphasized that the learned

High Court has also failed to take into consideration that under the Azad Jammu and Kashmir Interim Constitution, 1974 (Constitution) the age of retirement of Judge of the High Court is provided as 62 years and not 62 years and one month. He forcefully argued that throughout the service record including salary slips and CNIC, the date of birth of the private respondent is recorded as 22.02.1959. The CNIC appears to be renewed in the year 2019 in which the date of birth was entered as 22.03.1959 but surprisingly the respondent has not even bothered to get the same corrected according to Matriculation Certificate. He added that the respondent cannot claim retirement on the strength of Matriculation Certificate against the dictum laid down by this Court in a number of pronouncements that the retirement can only be made on the basis of the date of birth recorded in the service record. It is amazing that the respondent, who remained the Judge of the High Court for a long time, and himself pronounced in a number of cases that if the date of birth is wrongly entered in the service record, a civil

servant can move for correction of the same within a period of two years from the date of such entry; but in his own case the private respondent ignored the settled principle of law. Even otherwise, the private respondent was holding such a dignified position, hence, it was not suitable for him to remain indulged in such like controversy. He added that the learned High Court failed to take into consideration the real controversy in its true perspective. He emphasized that amazingly it has not been mentioned in the impugned judgment whether the writ petition has been accepted or dismissed. In this state of affairs, while accepting this appeal the impugned judgment may be set-aside with a direction to retire the private respondent with effect from 23.02.2021. In support of his contentions, he referred to the cases reported as *Zafar Iqbal Khan vs. Azad Government & others* [PLJ 2014 AJ&K 344], Khurshid Hussain vs. Azad Govt. & others [PLJ 2012 AJ&K 58], *Sardar Khurshid Hussain vs. Azad Govt. & others* [2012 SCR 23], *Sh. Mumtaz Ali alias Mumtaz Alam vs. Govt. of Punjab* [1991 PLC (C.S.) 1202] and *Qamaruddin vs.*

Pakistan through Secretary Establishment Division Islamabad & another [2007 SCMR 66].

4. On the contrary, Sardar M. R. Khan, Advocate, the learned counsel for the private respondent argued with vehemence that the impugned judgment of the High Court is perfect and quite in consonance with the principle of law laid down by the superior Courts. He added that the respondent was inducted into service on the basis of the date of birth incorporated in Matriculation Certificate, i.e., 23.03.1959. Likewise, in all the documents pertaining to the service record i.e., the ACRs, Advocacy License, Pleader-ship License etc., the date of birth of private respondent is recorded as 23.03.1959. As the date of birth in the CNIC and salary slips was wrongly mentioned, hence, the same has rightly been rectified by the concerned quarters. Even otherwise, if there is any contradiction regarding the date of birth in the CNIC the same cannot be taken into consideration as the same was issued much after the induction of the private respondent in the service. Furthermore, the date of

birth incorporated in the salary slips cannot be relied upon as even the qualifying service of private respondent has wrongly been mentioned in it. So far as the resignation of the private respondent is concerned, it was verbal in nature, as during the said period the notification of retirement of private respondent was issued, hence, the same was not submitted. He stated that the statement made by him at leave stage, in this regard, was result of some misconception. He further submitted that as the respondent for all the practical purposes was Chief Justice of the High Court, hence, in the light of the principle of law laid down by the apex Courts of Azad Kashmir and Pakistan, the learned High Court has rightly directed the respondents to treat the private respondent as the Chief Justice. According to his estimation, the judgment passed by the High Court is well in accordance with law calling for no interference. The learned counsel referred to the cases reported as *Syed Manzoor Hussain Gillani vs. Azad Govt. & others* [PLJ 2012 AJ&K 113], *Sardar Karam Dad Khan vs. Chairman AJ&K Council & others*

[PLJ 2010 AJ&K 40], *Director General Anti-Corruption vs. Abdul Qayyum & another* [2017 SCR 507] and *Ahmed Nawaz Tanoli vs. Chairman Azad Jammu and Kashmir Council & others* [2016 SCR 960].

5. Raja Amjad Ali Khan, Advocate, added that the private respondent has rightly been retired from the service on the basis of the date of birth recorded in the Matriculation Certificate. It has been misconceived that there is a contradiction in respect of date of birth in the service record, CNIC and salary slips rather it would be correct to say that there is a contradiction between the service record.

6. Raja Ayaz Ahmed, the learned Assistant Advocate-General, while supporting the arguments advanced by the learned counsel for private respondent further added that under Article 35-A of the Kashmir Service Regulations (KSR), the age to be entered in service record of an official should be that which is entered in his University Certificate but if, he has no such certificate, it should be one that is entered in his School Leaving Certificate duly

attested by a Gazetted Officer. As in the Matriculation Certificate the date of birth of private respondent is entered as 23.03.1959, hence, the same was rightly considered for the purpose of retirement. He further referred to Fundamental Rule 10, Supplementary Rule 3 along with Article 67(2) of AJ&K Financial Code and 264 of KSR while submitting that that in view of the mode prescribed under law the date of birth is entered in the service book in the light of Matriculation Certificate and on the basis of such date the private respondent was retired from the service. No illegality has been committed; hence, this appeal is liable to be dismissed. He placed reliance on the cases reported as *Akbar Khan vs. Karachi Transport Corporation* [1988 PLC 135], *Riaz Ahmed alias Abdul Haq* [1991 CLC 870] and *Chairman, Area Electricity Board Communication & another vs. Qazi Muhammad Ilyas* [1998 PLC 270].

7. We have impassively heard the learned counsel for the parties and minutely inspected the record with due care.

8. Bearing in mind the arguments orated at bar by the learned counsel for the parties, the legal propositions requiring detailed deliberation in this *lis*, are as follows:-

(i) Whether the private respondent has rightly been retired from the office on the basis of date of birth incorporated in the Matriculation Certificate;

(ii) whether the private respondent after tendering the resignation, was justified to hold the position of Acting Chief Justice after 23.02.2021 or not; and

(iii) whether the learned High Court was empowered to issue the direction for amending the notification of retirement of the Acting Chief Justice, High Court as a Chief Justice.

9. Firstly, we would like to look into the matter of the date of retirement of the private respondent. The learned counsel for the appellant has laid great stress on the point that the private respondent attained the age of superannuation on 23.02.2021, in view of the date of birth entered in

his CNIC and salary slips, hence, he was supposed to be retired from office on the said date, whereas, on the contrary the private respondent defends the date of birth incorporated in the academic credentials including the Matriculation Certificate i.e., 23.03.1959.

10. Sub-Article (5) of Article 43 of the Constitution, mandates that *"the Chief Justice or a Judge of the High Court shall hold office until he attains the age of sixty-two years unless he sooner resigns or is removed from office in accordance with law."* The private respondent was inducted into service on the recommendations of Public Service Commission as Sub-Judge vide notification dated 03.08.1988. He remained serving against various positions, elevated as a Judge of the High Court and later on as the Acting Chief Justice. On 16.02.2021, the Registrar of the High Court wrote a letter to the Secretary Law, Justice, Parliamentary Affairs and Human Rights Department (respondent No.5), for issuance of retirement notification of private respondent, which runs as under:-

عدالت العالیہ آزاد جموں و کشمیر مظفر آباد

.....☆☆☆.....

بخدمت:

جناب سیکرٹری،

قانون، انصاف، پارلیمانی امور و انسانی حقوق،

آزاد حکومت ریاست جموں و کشمیر، مظفر آباد۔

نمبر/**5438**/انتظامیہ/ہائیکورٹ/2021ء مورخہ:**16.02.2021**

عنوان: **اجرائیگی نوٹیفکیشن ریٹائرمنٹ جناب جسٹس اظہر سلیم بابر، قائم مقام چیف جسٹس، عدالت العالیہ۔**

السلام علیکم!

معاملہ عنوان الصدر میں تحریر خدمت ہے کہ جناب جسٹس اظہر سلیم بابر، قائم مقام چیف جسٹس، عدالت العالیہ، آزاد جموں وکشمیر کی ریٹائرمنٹ کے سلسلہ میں ابتدائی سروس ریکارڈ کی فراہمی کے لیئے دفتر ہذا سے آپ کو بروئے مکتوب زیر نمبر/4652/انتظامیہ/ہائیکورٹ/2021ء، مورخہ: 12.02.2021، تحریک کی گئی تھی، جس پر آپ نے بروئے مکتوب زیر نمبر م ق/اے ڈی/262/2021، مورخہ 15.02.2021، طلبیدہ سروس ریکارڈ کی عدم دستیابی کی نسبت تحریر کیا ہے۔

لہٰذا جناب جسٹس اظہر سلیم بابر، قائم مقام چیف جسٹس، عدالت العالیہ، آزاد جموں وکشمیر کے دفتر ہذا میں دستیاب ریکارڈ (سند میٹرک مجریہ 30.11.1973، شناختی کارڈ اور سیلری سلپ) کی عکسی نقول ارسال ہو کر تحریر ہے کہ جناب قائم مقام چیف جسٹس موصوف کی ریٹائرمنٹ کے سلسلہ میں مطابقاً ضروری کارروائی عمل میں لائی جائے۔

معاملہ اشد ضروری تصور ہو۔

16/2/2021

رجسٹرار

After receiving the aforesaid letter, respondent No.5 forwarded a detailed summary to the Worthy President of Azad Jammu and Kashmir. The referred summary along with the noting of concerned quarters on it would be helpful to understand the controversy in a better way, hence, it is apt to reproduce the same as under:-

آزاد حکومت ریاست جموں وکشمیر

محکمہ قانون، انصاف، پارلیمانی امور وانسانی حقوق

☆☆☆

خلاصہ برائے صدر گرامی

عنوان:۔ اجرائیگی حکم ریٹائرمنٹ ومنظوری ایک سال لیو انکیشمنٹ بحق جناب جسٹس اظہر سلیم بابر، قائم مقام چیف جسٹس، عدالت العالیہ

عدالت العالیہ، آزاد جموں وکشمیر نے بروئے مکتوب (ضمیمہ "A") تحریک کی ہے کہ جناب جسٹس اظہر سلیم بابر، قائم مقام چیف جسٹس، عدالت العالیہ، آزاد جموں وکشمیر کی ریٹائرمنٹ کے سلسلے میں عدالت العالیہ میں دستیاب ریکارڈ (سند میٹرک، شناختی کارڈ اور سیلری سلپ) کی نقول کی روشنی میں ریٹائرمنٹ کی کارروائی عمل میں لائی جائے۔

2- معاملہ کا جائزہ لیا گیا ہے۔ آزاد جموں وکشمیر عبوری آئین، 1974ء کے آرٹیکل 43(5) کی رو سے عدالت العالیہ کے ججز صاحبان اور جناب چیف جسٹس 62 سال عمر کی تکمیل تک اپنے عہدہ جلیلہ پر فائز رہ سکتے ہیں (ضمیمہ "B")۔ آمدہ ریکارڈ عدالت العالیہ کی روشنی میں جناب قائم مقام چیف جسٹس اظہر سلیم بابر، کی تاریخ پیدائش بمطابق سیلری سلپ اور قومی شناختی کارڈ مورخہ 23.02.1959 درج ہے (ضمیمہ "C")۔ جبکہ بمطابق میٹرک سرٹیفکیٹ موصوف کی عمر مورخہ 23.03.1959 درج ہے۔ اس طرح تاریخ پیدائش میں بظاہر ایک ماہ کی تفاوت پائی جاتی ہے۔ جبکہ موصوف بروئے نوٹیفکیشن مورخہ 13 اگست 1988 (ضمیمہ "D") بطور سب جج تعینات ہوئے۔ Fundamental Rules کے قاعدہ 10 کی رُو سے بھی کسی ملازم کی سرکاری محکمہ میں تعیناتی کی صورت میں میڈیکل سرٹیفکیٹ ترتیب دے کر متعلقہ محکمہ کے سربراہ کے دستخطوں سے بغرض طبی معائنہ مجاز میڈیکل آفیسر کو ارسال کیا جاتا ہے اور میڈیکل آفیسر کے دستخطوں کے بعد میڈیکل سرٹیفکیٹ، محکمہ حسابات کو ہمراہ پہلی تنخواہ کے بل کی ادائیگی کیلئے پیش کیا جاتا ہے جس کے بعد ہی محکمہ حسابات تنخواہ کی ادائیگی عمل میں لاتا ہے، (ضمیمہ "E")۔ جبکہ سپلیمنٹری رولز کا قاعدہ 3 میڈیکل سرٹیفکیٹ پیش کرنے کا طریقہ کار بیان کرتا ہے جس میں ملازم مذکور کی جانب سے بمطابق ریکارڈ تحریر کردہ عمر اور میڈیکل آفیسر کی رائے کی روشنی میں عمر کا تعین کیا جا کر سروس ریکارڈ میں حتمی طور پر درج کی جاتی ہے (ضمیمہ "F")۔ جبکہ آزاد جموں وکشمیر فنانشل کوڈ آرٹیکل 67 (2) کی روشنی میں ہر ایک سرکاری ملازم کی تاریخ پیدائش متعلقہ کالم میں انگلش کیلنڈر کے تحت درج کی جانا تقاضائے قانون ہے اور متذکرہ الصدر قانون کی رُو سے جو تاریخ پیدائش ریکارڈ میں ایک بار درج ہو جائے، ملازمت کے لیے حتمی تصور ہوتی ہے (ضمیمہ "G")۔ تاہم یہ دستاویزات محکمہ حسابات یا عدالت العالیہ میں جج موصوف کے حوالہ سے دستیاب/میسر نہیں ہیں۔

3- جریدہ آفیسران کا سروس ریکارڈ محکمہ حسابات کی تحویل میں ہوتا ہے جس کو محفوظ رکھنا محکمہ حسابات کی اولین ذمہ داری ہے۔ محکمہ حسابات کے ریکارڈ میں میڈیکل سرٹیفکیٹ نہ ہونے کے باعث ابہام پیدا ہوا ہے اور پے سلپ کے تحت صاحب ممدوح کی تاریخ پیدائش 23.02.1959 درج ہے یہ تاریخ پیدائش کس ریکارڈ کی بنیاد پر پے سلپ میں درج ہوئی اِس نسبت محکمانہ ریکارڈ اور محکمہ حسابات کے اعلیٰ آفیسران کوئی وضاحت/ثبوت پیش کرنے سے قاصر ہیں۔ اعلیٰ عدالتوں نے ہیجوں نوعیت کے معاملات میں یہ قرار دیا ہے کہ تاریخ پیدائش جو سروس ریکارڈ میں بوقت تعیناتی درج ہو وہ مابعد کے جملہ معاملات کے لیئے حتمی تصور ہوتی ہے تاہم اگر کسی ملازم کی تاریخ پیدائش کا اندراج ریکارڈ میں درست طور پر نہ ہو تو ایسی صورت میں متعلقہ ملازم دو سال کے اندر اپنی تاریخ پیدائش میں درستگی کی کارروائی کی استدعا کر سکتا ہے۔ اور بوقت ریٹائرمنٹ تاریخ پیدائش میں کسی بھی طرح کی تبدیلی کی گنجائش موجود نہ ہے۔ اعلیٰ عدالتوں کے بذیل فیصلہ جات اس نسبت راہنمائی حاصل ہوتی ہے:۔

> "If for the sake of arguments, it is persumed that his date of birth was not correctly entered in the service record then the proper course was to agitate the matter at the proper forum for correction of entry of his date of birth in the service record. The same cannot be allowed to be raised at the time of retirement". [2017 SCR 507] ("H" ضمیمہ)

"Petitioner dispite rendering judicial service extended over two and half decades had failed to apprise his competent authority for such correction, hence, at such belated stage his claim cannot be accepted in light of statutory provisions----------.According to judicial consensus a civil servant, should solicit correction of his date of birth within two years of joining service".PLJ2014AJ&K344 ("I"ضمیمہ)

"We have considered the arguments advanced at bar on behalf of the parties and also perused the record, made available. The petitioner himself claimed that he has been inducted into service on 20.04.1971 and he has rendered more than 40 years service. For the first time, he raised the dispute regarding the correction of his date of birth before the competent authority on 16.12.2011, just less than a one month's time before his retirement.

In view of the principle of law enunciated in Dr. Kh. Muhammad Aslam's case, the declaration of age at the time of entry in Government service should be deemed absolutely conclusive. The petitioner, despite rendering the service of more than 40 years has not disputed the entries of the service record regrding his age thus, at this belated stage, in the light of statutory provision, his claim is not acceptable".[2012 SCR23] ("J" ضمیمہ)

"Therefore, if at all the petitioner has a valid claim he should have instituted proceedings for correction of his date of birth within the period of two years after coming back from East Pakistan and if it was not possible then at least he should have agitated for correction of his date of birth wihtin reasonable time which according to him has been wrongly recorded in the service record. In view of such circumstances we believe that petitioner himself was satisfied with his date of birth i.e 04.10.1939 because he did not challenge the same at earliest stage. Besides he has full knowledge about such entry in his service record because as per the impugned judgment petitioneri's date of birth has been mentioned in ACRs. But despite acquiring knowledge he did not agitate against such entry as such by his own conduct he cannto be allowed to change his stance after a considerable long period". [2003SCMR1105] ("K"ضمیمہ)

4- جناب اظہر سلیم بابر، قائمقام چیف جسٹس کی جانب سے فراہم کردہ مصدقہ دستاویزات جن میں میٹرک سرٹیفکیٹ، یونیورسٹی سرٹیفکیٹ، عدالت العالیہ کی جانب سے پلیڈرشپ کے لیے جاری شدہ لائسنس مجریہ 1982 اور ہائی کورٹ کے لیے جاری شدہ لائسنس کی تصدیق مجریہ 14.01.1988 کے مطابق موصوف کی تاریخ پیدائش 23.03.1959 درج ہے۔ جبکہ پے سلپ اور شناختی کارڈ میں مورخہ 23.02.1959 درج ہے۔

5- معاملہ ہذا میں ریکارڈ کی پڑتال سے یہ عیاں ہوا کہ جناب اظہر سلیم بابر، قائمقام چیف جسٹس عدالت العالیہ کی بطور سب جج تعیناتی مورخہ 13.08.1988 جو میڈیکل سرٹیفکیٹ بوقت تقرری پیش کیا گیا، محکمہ حسابات کے ریکارڈ میں موجود/میسر نہ ہے۔ تاہم کشمیر سروس ریگولیشن کا آرٹیکل 35-A تاریخ پیدائش کے حوالہ سے بذیل اصول وضع کرتا ہے:۔

35-A. .....

Note-1 .....

Note-2 The age to be entered in the service records of an official should be that entered in his University certificate but if he has no University qualification it should be one that is entered in his school certificate duly attested by a Gazetted officer of the Education Department. .....

("L"ضمیمہ)

کشمیر سروس ریگولیشن کے بالا آرٹیکل کی رُو سے تاریخ پیدائش جو یونیورسٹی سرٹیفکیٹ پر درج ہو اور اگر یونیورسٹی تعلیم نہ ہونے کی صورت میں سکول سرٹیفکیٹ میں درج تاریخ پیدائش کی بنیاد پر سروس ریکارڈ میں اندراج کیا جانا تحریر ہے۔ عدالت العالیہ کی جانب سے تصدیق شدہ ریکارڈ کے مطابق جج موصوف کی پنجاب یونیورسٹی لاء کالج کے سرٹیفکیٹ اور میٹرک کی سند، پلیڈرشپ کے لیے جاری شدہ لائسنس مجریہ 1982 اور ہائی کورٹ کے لیے جاری شدہ لائسنس کی تصدیق مجریہ 14.01.1988 کی رو سے تاریخ پیدائش 23.03.1959 درج ہے (ضمیمہ "M")۔ لہذا کشمیر سروس ریگولیشن کے آرٹیکل 35-A کی روشنی میں یونیورسٹی/سکول سرٹیفکیٹ میں درج تاریخ پیدائش کو ہی صحیح تسلیم کیا جا سکتا ہے۔ اِس نسبت بذیل فیصلہ جات سے بھی راہنمائی حاصل ہوتی ہے:۔

Authentic entry about age or Date of Birth would emanate from the "Janam Patri" or School Leaving Certificate. Entry about age, for the first time generally made in Matriculation Certificate is relied upon by everybody. [1998-PLC(CS)-270] ("N"ضمیمہ)

Entry in Identity card. No conclusive proof. Best evidence was parent certificate or school certificate & in absence of such evidence Date of entry in job initially joined. Medical Certificate also simply an opinion carrying margin of fluctuations. [1988-PLC(CS)-135] ("P"ضمیمہ)

بحالات بالا!

(i) جناب اظہر سلیم بابر، قائمقام چیف جسٹس کی تاریخ پیدائش کی نسبت محکمہ حسابات اور عدالت العالیہ کی جانب سے سروس ریکارڈ مہیا نہ ہونے اور عدالت العالیہ کی جانب سے واضح اور حتمی تاریخ پیدائش یا تاریخ ریٹائرمنٹ Declare نہ کرنے کے باعث موصوف کی جانب سے فراہم کردہ دستاویزات میٹرک سرٹیفکیٹ، پنجاب یونیورسٹی لاء کالج سے جاری سرٹیفکیٹ، لائسنس پلیڈر شپ (تصدیق عدالت العالیہ مجریہ 18.07.1982) اور لائسنس ایڈووکیسی عدالت العالیہ (تصدیق عدالت العالیہ مجریہ 14.01.1988) کی روشنی میں تاریخ پیدائش 23.03.1959 کو ہی درست تسلیم کرتے ہوئے ریٹائرمنٹ کے احکامات/منظوری حاصل فرمائی جائے۔ یا

(ii) سیلری سلپ اور قومی شناختی کارڈ کے اندراجات کی روشنی میں مناسب احکامات حاصل فرمائے جائیں۔

بمہربانی جناب اظہر سلیم بابر، قائمقام چیف جسٹس کی ریٹائرمنٹ کے حوالہ سے بمشاورت جناب وزیراعظم، صدر گرامی سے احکامات/منظوری آزاد جموں وکشمیر عبوری آئین، 1974 کے آرٹیکل (5) 43 کی روسے حاصل فرمائی جائے۔ جج موصوف حسب استحقاق لیو انکیشمنٹ کے بھی حقدار ہوں گے۔

وزیر اعظم سیکرٹریٹ مظفرآباد 392 22.02.2021

18/02/2021
سیکرٹری قانون

جناب وزیر قانون

جناب اظہر سلیم بابر قائمقام چیف جسٹس کی ریٹائرمنٹ کے متعلق سیکرٹری قانون کی ارسال کردہ سمری میں تجاویز ۸ اور ۹ میں پیش کی گئی وضاحت کی روشنی میں تجویز ۶ (i) کے مطابق تاریخ پیدائش 23/3/1959 کو درست تسلیم کرتے 23/3/2021 سے ریٹائرڈ کیے جانے کی منظوری تجاویز 7 کے مطابق جناب صدر گرامی سے حاصل فرمائی جائے

22/2/21

جناب وزیر اعظم

شمارہ 6(i) برائے منظوری

صدر گرامی

(بسلسلہ گزشتہ صفحہ جناب جسٹس اظہر سلیم بابر صاحب سے متعلق

47. 15. شمارہ 6(i) اور شمارہ 9 کی منظوری دی جاتی ہے

۲۲/۲/۲۱

چیف سیکرٹری

Accordingly, the notification of retirement of private respondent was issued in the following manner:-

آزاد حکومت ریاست جموں وکشمیر

محکمہ قانون، انصاف، پارلیمانی امور وانسانی حقوق

****

''مظفرآباد''

مورخہ 23 فروری، 2021

نوٹیفکیشن:

نمبر م ق/ اے ڈی/100-287/2021ء جناب صدر، آزاد جموں وکشمیر نے بمنشاء آرٹیکل (5) 43 آزاد جموں وکشمیر عبوری آئین، 1974، جناب اظہر سلیم بابر، قائمقام چیف جسٹس، عدالت العالیہ کو (میٹرک سرٹیفکیٹ میں درج تاریخ پیدائش کی بنیاد پر) 62 سال عمر کی تکمیل پر از مورخہ 22.03.2021 (بعد از دوپہر) قائمقام چیف جسٹس، عدالت العالیہ کے عہدہ سے ریٹائرڈ کیئے جانے اور حسب استحقاق لیو انکیشمنٹ کی ادائیگی کی منظوری صادر فرمائی ہے۔

سیکشن آفیسر قانون

The analysis of the summary, reproduced hereinabove, demonstratively envisages that the initial service record of the private respondent is not available. It also illustrates that except CNIC and salary slips, in all the other documents including his Matriculation Certificate, University Certificate, ACRs, Advocacy License, Pleader-ship License etc., the date of birth of private respondent is conjointly recorded as 23.03.1959. In this scenario, the matter was placed before the Worthy President of Azad Jammu and Kashmir for apposite order, who took

into consideration the date of birth of private respondent entered into the Matriculation Certificate for the purpose of his retirement.

12. The *ratio decidendi* laid down by the superior Courts in a plethora of judgments is that the date of birth entered in the service record has to be given due credence, but, the special facts of the instant case, demand elaboration of the 'record of service'. A person may be inducted in service to a gazetted or non-gazetted post. The mode prescribed under law for maintaining the record of service of a gazetted officer and that of non-gazetted officer is quite different. Chapter XXI of KSR deals with the 'record of service'. This Chapter is further sub-divided into two sections. Section-I is linked with gazetted officers, whereas, Section-II is associated with the non-gazetted officers. It is apt to reproduce here the referred Chapter, as follows:-

"Chapter XXI.—Record of Service
Section I --- Gazetted Officers

General Rule

264. A record of the service of Gazetted Officers is maintained by the Accountant-General who audits the salaries. When a

British Lent Officer is reverted to his appointment in the British Government, a copy of his Service Register will be sent by the Audit Officer to the Accountant or Controller-General amounting for the contribution.

Section II.- Non Gazetted Officers
Service Books and Service Rolls

265. With the exceptions noted below, every non-gazetted officer, holding a substantive appointment on a permanent establishment, is required to keep up a Service Book (Treasury Form No.60), in which every step in his official life, in minute detail, should be recorded. It should show changes in pay, leave taken, transfer, deputation and suspension, and other interruptions in service in detail, with duration of each duly contemporaneously attested by the Head of office. If the officer is himself the Head of an office, the contemporaneous attestation shall be made by his immediate superior. The following are the exceptions referred to:--

(1) …….

(2) …….

266. A Service Book is supplied, at his own cost, to every officer on his *first appointment* it is kept in the custody of the Head of the office under whose signature the monthly pay bill of the establishment is paid from the Treasury. When an employee is transferred to another office, his service book should be sent to the Head of the office to which he is transferred and not made over to him, nor should it be given to him when proceeding on leave. When a non-gazetted officer is officiating in a gazette appointment, his service book should be kept by the Head of the office to which such officer permanently belongs,

> but when he is confirmed in such appointment, his service book should be forwarded to the Accountant General for record in his office. The service book may be given up to the officer concerned if he resigns or is discharged without fault, an entry being first made therein to this effect.
>
> Responsibility for Entries
>
> 267. It is the duty of every officer to see that his service book is properly kept up and that all corrections in it are properly attested. If the book is not carefully kept up, difficulties may arise as to the verification of service, when the officer applies for *pension.*
>
> 267. Personal certificates of character should not ordinarily be entered in the service book; but if any officer is reduced to a lower substantive appointment, the cause of reduction should always be stated in brief."

A bare reading of Chapter *(supra)*, demonstrates that in case of a non-gazetted officer a "service book", in the prescribed form, is maintained by the Head of the office under whose signature the monthly pay bill of the establishment is paid from the Treasury. This book keeps moving with that officer whenever he is transferred. If a non-gazetted officer is promoted to the gazetted post, his service book is transferred to the Accountant-General. The aforesaid Chapter is silent in respect of

record of service of a civil servant, who is directly recruited to a gazetted post, however, it speaks that the record of service of a gazetted officer is maintained by the Accountant General who audits the salaries. It is an admitted position that the private respondent was inducted into service on the recommendations of the Public Service Commission, however, the Law Department is not in custody of record of service of the private respondent, whereas, the file available in the office of Accountant General is also not equipped with necessary documents, even the documents pertaining to the academic credentials were supplied by the private respondent on rising of issue. The medical certificate as required under the relevant law is also not available. In this state of affairs, an eventuality has arisen that when law does not provide for maintenance of any specific document in case of a gazetted officer, like the 'service book' in the case of a non-gazetted employee, what will be the document to be given prime consideration to derive the date of birth,

especially, when the contradiction is found regarding the date of birth in different documents.

13. It would be proper to elucidate here that in the pleadings, the appellant has mainly focused that the private respondent cannot raise the dispute of date of birth at the verge of retirement and he should have got corrected the entries of date of birth recorded in CNIC and salary slips within the stipulated time. Perhaps, the learned counsel is unaware of the fact that when the contradiction between the record of service was pointed out by the concerned; the matter was placed before the Worthy President through proper channel for appropriate order and the private respondent had nothing to do with the same. The matter was placed before the competent authority to decide whether (i) the private respondent will attain the age of superannuation on the basis of date of birth entered in CNIC and salary slips; or (ii) he will retire from the position on the basis of the date of birth recorded in the Matriculation Certificate. We are agreed with the contention of Raja Amjid Ali Khan, Advocate, that in

the instant case there is contradiction between the record of service, hence, the question to be resolved is; in presence of contradiction between the record, what will be the document to be given prime consideration for the purpose of date of birth. It would be apt to discuss the aforesaid documents one-by-one.

14. CNIC is a document issued by the National Data Base and Registration Authority (NADRA), which demonstrates the identity of a person holding it and also bears the date of birth. We have scanned a number of judgments, involving the controversy relating to the date of birth, and reached the conclusion that CNIC has never ever been given due preference for the purpose of determination of age. It may be stated here that CNIC is not the conclusive proof of the age rather simply the date of birth is shown by the holder of the card for the purpose of identification and nothing beyond. In the case reported as *Akbar Khan vs. Karachi Transport Corporation* [1988 PLC (CS) 135], the same view has been adopted. Leaving aside the fact whether CNIC

can be considered a conclusive proof of date of birth or not, there are two CNICs on record. The CNIC, relied upon by the learned counsel for the appellant, was issued on 22.08.2019 and bears the date of birth as 23.02.1959, however, this CNIC appears to be renewed on 14.04.2021, wherein, the date of birth is recorded as 23.03.1959. The competent Authority, therefore, in the instant case, has rightly not considered the CNIC relied on by the learned counsel for the appellant to derive the date of birth of private respondent for the purpose of retirement.

15. The other important document, heavily relied on by the learned counsel for the appellant, is salary slip which bears the date of birth of the private respondent as 23.02.1959. It would not be out of context to mention here that the salary slip, which is a computer-generated document, only serves as a proof of salary which a person draws on monthly basis, hence, it would be childish to believe that the salary/pay slip can be considered a conclusive proof of date of birth which is mentioned causally. We are strengthened in our view from the fact that in the

salary slip for the month of December, 2020, the qualifying service of private respondent was mentioned as 30 years, 09 months and 18 days, whereas, at that time his qualifying service was 32 years, 7 months and 18 days. Furthermore, the date mentioned in this document was corrected by the concerned as is evident from the salary slip for the month of February, 2021, thus such type of document cannot be taken into consideration as a conclusive proof of date of birth.

16. In the given circumstances, the only remaining document before the concerned authorities was the Matriculation Certificate of private respondent issued by the Board of Intermediate and Secondary Education, Lahore, which is of great importance. In this document, the date of birth of private respondent is recorded as 23.03.1959. In our opinion, the Matriculation Certificate is the basic document from which all the other relevant documents emanate. Generally, the entry regarding the age, for the first time, is made in the Matriculation Certificate which is relied upon

by everybody. It is the requirement of law that 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 with as far as possible confirmatory documentary evidence such as Matriculation Certificate, Municipal Birth Certificate etc. In this regard, Rule 116 of the General Financial Rules of the Federal Government can be referred, which runs as follows:-

> "116. Every person newly appointed to a service or a post under Government should at the time of 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 be given. The actual date or the assumed date determined under para. 17 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."

A plain reading of the Rule (supra) makes it abundantly clear that a civil servant is required to declare his date of birth not verbally but through a

confirmatory document such as Matriculation Certificate etc., The date of birth so declared cannot be altered, except in the case of a clerical error. As stated hereinabove, in the case in hand neither the record of induction of the private respondent into service is available nor file maintained by the Accountant General is equipped with necessary documents from which it can be ascertained that what was the date declared by the private respondent at the time of induction in service. Under Article 129 of the Qanun-e-Shahadat, 1984 the Court may presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Having regard of the common course of natural events; it can safely be presumed that the date of birth of private respondent was declared as 23.03.1959, through confirmatory evidence i.e., Matriculation Certificate. This date became part of several documents including the ACRs, Advocacy License,

Pleader-ship License etc., hence, no one can say that the private respondent has intentionally for taking undue benefits misstated his date of birth, that too having difference of merely one month. We are fortified in our view as under Article 35-A of KSR, the age to be entered in the record of service of an official should be that recorded in his University Certificate or School certificate. The Article (supra) is reproduced as under:-

> "35-A. The certificate should be in the Treasury Form No.49 with suitable modifications where necessary.
>
> Note 1.—When an officer, in whom a defect has been noticed by the examining officers is transferred from one office to another, the duties of which are different in character, a Medical Officer, should report whether the defect will materially interfere with the discharge of the new duties of the officer transferred.
>
> Note 2.—The age to be entered in the service records of an official should be that entered in his University certificate but if he has no University qualification it should be one that is entered in his school certificate duly attested by a Gazetted officer of the Education Department. In other cases the Head of the office concerned should satisfy himself of a correctness of the age declared by requiring the production of horoscope of the concerned person or in any other

> manner considered suitable. The method adopted should be recorded in writing."
>
> (underlining is ours)

The Article (supra) has emphasized on 'service records' of 'an official', who may be gazetted or non-gazetted, meaning thereby that in all the documents relating to the service records, the date to be mentioned is that recorded in the University Certificate or School Certificate, as the case may be. In our estimation, when there is clear contradiction between the record of service of the private respondent, in view of the aforesaid provisions relating to the maintenance of service record, the due credence will be given to the Matriculation Certificate and all the subsequent documents including CNIC, salary slips etc., cannot override the entry of date of birth recorded in the Matriculation Certificate unless the same is corrected by the Board of Intermediate and Secondary Education under the relevant law. In this scenario, when the matter of date of retirement came before the concerned quarters, the Matriculation Certificate has wisely

been considered for the purpose of issuance of retirement of private respondent.

17. It has been frequently argued at bar that despite rendering the judicial service extended over two and half decades, the private respondent failed to get corrected his date of birth. We are not convinced by this argument as the private respondent never came forward with any claim, on the basis of wrong entry of date of birth. It was the Worthy President, who decided the date of retirement of private respondent on the basis of available record. So far as the argument that the salary slips containing the wrong entry of date of birth had been conveyed to the private respondent on monthly basis but he has not bothered to get the same corrected, is concerned, as stated hereinabove, the salary slip is not the conclusive proof of date of birth, hence, the private respondent was not supposed to get the same corrected.

18. For our own satisfaction, we have also summoned the record from the office of the Accountant General and thoroughly scanned the

same. It has been found that the file starts with the proforma for fixation of pay, whereas, no document relating to the induction of the private respondent in service is found. It appears that somewhere in the year 1995 the private respondent applied for privilege leave. In the form of application for leave, he mentioned his date of birth as 23.03.1959. The other applications of the same nature also portray the same date of birth; hence, it cannot be said that the private respondent, who has held such a high esteemed position, has attempted to take undue benefits of merely one month by mentioning wrong date of birth. Even otherwise, there is a slight difference of one month which appears to be a numerical disorder.

19. At this juncture, it is suitable to conclude that the date of birth of the private respondent, in presence of contradiction between the record of service, has rightly been derived by the concerned quarters from the Matriculation Certificate, keeping in view the relevant provisions of law relating to maintenance of service record. In this regard, the

questions relating to correction of date of birth within a period of two years, negligence of private respondent, correction of date of birth at the verge of retirement; are irrelevant and the case law referred to in support of these arguments is also not applicable. Viewed in the above context, the impugned judgment, to the extent of issue of date of retirement, is well structured and not replete with any legal and factual infirmity, hence, calls for no intrusion by this Court.

20. At leave stage, the learned counsel for the private respondent (Sardar M. R. Khan, Advocate) made a statement that the private respondent was not desirous to hold the position, as the same was being made disputed, hence, in order to avoid any conflict, he tendered his resignation but the same was not accepted, however, while arguing in appeal, the learned counsel bounced back from his statement and submitted that the statement was made by him without consultation with his client, actually, the resignation was verbal in nature which was not accepted by the Worthy President. We would

like to make it clear that the members of the legal profession are required to conduct their cases with a sense of personal responsibility. They should act with reasonable care and caution, especially, while making a statement before the apex Court such care and caution must be manifold. It may be mentioned here that the Advocates are not the puppets compelled to obey the dictates of their clients rather they are responsible to the Court for the fair and honest conduct of a case. The Supreme Court of India in the case reported as *Thangavelu v. Chensgalvaroya* [AIR 1935 Madras 578] has commanded the Advocates to act with reasonable care and caution in the following words:-

> "…It is necessary at this point to state that, although an advocate has his duty towards his client to perform, he has other duties and responsibilities as well. He has no right whatever even on the instructions of his client recklessly to make charges of fraud. His responsibility to the Court, and I may also add to the Bar whose traditions it is his duty to maintain, make it incumbent upon him to satisfy himself that there are reasonable grounds for making such charges. On this point there are observations with which I entirely agree in the judgment of Mears, C.J. and Walsh and

Sulaiman, JJ. In 46 All. 121 (1) at p.124, where it is said:

> "Members of the legal profession are under no duty to their clients to make grave and scandalous charges either against Judges or the opposite parties on the mere wish of their clients. They are not puppets compelled to obey the dictates of their clients where matters of good faith and honourable conduct are concerned. They are responsible to the Court for the fair and honest conduct of a case. They are not mere agents of the man who pays them, but are acting in the administration of justice, and in matters of this kind they are bound to exercise an independent judgment, and to conduct themselves with a sense of personal responsibility. If they fail to act with reasonable care and caution, they are unfit to enjoy the privileges conferred upon them by law, and serious breaches must be visited with punishment."

The learned counsel is warned to be careful in future.

21. It seems that in respect of the resignation by a Judge High Court the private respondent was under misconception. His contention is that he tendered his resignation but the same was not accepted. For the purpose of dignity of the Court, we would like to draw here a distinction between the resignation tendered by a government servant and

by a Judge, holding the constitutional post. "Resignation" means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. The act of relinquishment or giving up may be unilateral or bilateral. In case of a government servant, the resignation is bilateral as it comes into effect when the authority to whom the resignation is submitted, accepts the same, whereas, in case of a Judge, holding the constitutional post, the resignation is unilateral. His resignation is mere an information to the concerned and becomes effective forthwith. Under Article 43(5) of the Constitution the term of office of Judge, High Court would come to an end on his resignation. The concept of submission and acceptance of resignation is absent in this provision, which manifests that the dignity of Judge of the High Court needs that his resignation should be immune from acceptance. The Supreme Court of India in the case reported as *Union of India etc., vs. Gopal Chandra Misra & others* [AIR 1978 Supreme Court 694], has elaborated the

resignation of a Judge of a High Court in a scholarly manner. It would be appropriate to reproduce here the relevant part of the judgment as follows:-

> "51. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a government servant or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure, terminated when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217 (1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be

> effective withdraw it, because the Constitution does not bar such withdrawal."

22. It is in our judicial notice that after tendering the resignation, which in his view was not accepted, the private respondent avoided to perform any judicial function and mostly remained on leave till his retirement. This practice is highly deprecated, however, as his counsel has resiled from his statement and we have warned him to be careful in future, hence, it is not appropriate for us to embark upon this matter.

23. Adverting to the portion of the impugned judgment of the High Court, whereby the notification of retirement of the private respondent has been modified as Chief Justice of High Court instead of Acting Chief Justice. There is no cavil with the principle of law laid down in *Al Jehad Trust vs. Federation of Pakistan* [PLD 1996 SC 324] that the most senior Judge of the High Court has a legitimate expectancy to be considered for the appointment as the Chief Justice but the law has provided different modes for appointment of Chief Justice and Acting

Chief Justice of the High Court. Sub-Article (2-A) of Article 43 of the Constitution, provides that:-

> "(2-A) A Judge of the High Court shall be appointed by the President on the advice of the Chairman of Council and after consultation-
>
> (a) with the Chief Justice of Azad Jammu and Kashmir; and
>
> (b) except where the appointment is that of Chief Justice; with the Chief Justice of the High Court.

Article 43-A of the Constitution deals with the mode of appointment of Acting Chief Justice. It is appropriate to reproduce the same as under:-

> "43-A. Acting Chief Justice.- At any time when:-
>
> (a) the office of Chief Justice of High Court is vacant; or
>
> (b) the Chief Justice is absent or is unable to perform the functions of his office due to any other cause,
>
> the President shall appoint the senior most of the other Judges of the High Court to act as Chief Justice."

There is clear distinction between the Chief Justice appointed under Article 43(2-A) and Acting Chief Justice appointed under Article 43-A of the Constitution. It is apparent that the mode of appointment of Acting Chief Justice of the High Court

and that of the Chief Justice of the High Court is completely different. The Acting Chief Justice is appointed by the President himself, whereas, the Chief Justice is appointed by the President on the advice of the Chairman of the Council, after consultation with the Chief Justice of Azad Jammu and Kashmir. Admittedly, the appointment of the Chief Justice of High Court was not made in accordance with sub-Article (2-A) of Article 43 of the Constitution, hence, in our estimation, modification of notification of retirement of private respondent as Chief Justice of the High Court amounts to amend the Constitution which is not permissible. Furthermore, the learned High Court has granted relief to the private respondent without existence of any *lis* in this regard. The framers of the Constitution never intended to confer suo moto jurisdiction on the High Court. The apex Court of Pakistan in the case reported as *Dr. Imran Khattak and another vs. Mst. Sofia Waqar Khattak and others* [2014 SCMR 122], has commented upon the jurisdiction of the High Court in the following terms:-

"……..…..It be noted that no Judge of a High Court or the supreme Court is robed, crowned and sceptered as a King to do whatever suits his whim and caprice. In all eventualities, he is bound to abide by and adhere to the law and the Constitution ……..It thus follows that the framers of the Constitution of 1962 and those of 1973, inasmuch as it can be gathered from the words used in Article 98 of the former and Article 199 of the latter, never intended to confer Suo Motu jurisdiction on a High Court. Had they intended, they would have conferred it in clear terms as the framers of the Code of Civil Procedure under its provision contained in section 115 have conferred it on the High Court and the District Judge and the frames of the code of Criminal Procedure under its provisions contained in section 439 and 439-A have conferred it on the High Court and the sessions Judge respectively. Article 175(2) of the Constitution leaves no ambiguity by providing that "no Court shall have jurisdiction, save as is or may be conferred on it by the Constitution or by or under any law". We would be offending the very words used in the Article by reading exercise of Suo Motu jurisdiction in it which cannot be read even if we stretch them to any extreme. It has been settled as far back as in 1916 in the case of Tricomdas Cooverji Bhoja v. Sri Gopingath Jui Thakur" (AIR 1916 Privy Council (sic)), that where the meanings of a provision are clear, unequivocal and incapable of more than one interpretation, even a long and uniform course of interpretation, if any, may be overruled, if it is contrary to its meanings. We have, therefore, no hesitation to hold that the High Court could not exercise Suo Motu jurisdiction under Article 199 of the Constitution of Pakistan. The more so when

> we have noticed that such jurisdiction has stridently been used even in the matters which are clearly and squarely outside the jurisdiction of a High Court."

It is clear that the High Court does not enjoy any such powers to grant relief to a person, in the manner granted to the private respondent in the instant case. According to the principle of law laid down by this Court in a number of cases, the High Court is not empowered to grant relief beyond the scope of pleadings, but amazingly in the instant case on the writ petition filed by the appellant, herein, against the private respondent, the relief has been granted to the private respondent. This act of the High Court is beyond understanding. We, therefore, are constrained to hold that the relief granted by the High Court does not commensurate or is covered by any legal provision of law on the subject and the same is without any legal backing. Consequently, the impugned judgment is liable to be set-aside to this extent.

24. Before parting with, we, with heavy heart observe here that the matter became complicated

due to the failure of the concerned to properly maintain the service record of private respondent. The law has provided a detailed mode for maintaining the service record from the date of entry of an employee into service to the date of exit but in the matter in hand the concerned failed to follow the law on the subject. It is in our notice that Audit Manual applicable to the Federal Civil Servants is being followed by the office of Accountant General in AJ&K for maintenance of service record of the gazetted officers. For instance, in the light of paragraph 101 of Audit Manual at the time of transfer of an officer, necessary entries have to be made by the concerned office in the Form-25, in which an entry of date of birth is also provided. Be that as it may, in the instant matter neither the provisions of Audit Manual nor any other procedure provided by law for maintenance of service record has been followed. This lapse on part of the concerned functionaries, if repeated in future, will be dealt with iron hands.

For the reasons recorded hereinabove, we partly accept this appeal and declare that the impugned judgment to the extent of modification of notification of retirement of private respondent as Chief Justice is not maintainable, hence, set-at-naught. No order as to costs.

CHIEF JUSTICE JUDGE

Mirpur,
29.07.2021

Approved for reporting