

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-1759 of 2024
(*Amir Khan versus Province of Sindh & others*)

Constitutional Petition No. D-2558 of 2024
(*Mehran versus Inspector General Sindh & others*)

Date	Order with signature of Judge(s)
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Before:
Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Nisar Ahmed Bhanbhro

Date of hearing and order: 12.11.2025

Petitioner Amir Khan
in CP No. D-1759/2024

Through Mr. Dur Muhammad Shah
advocate

Petitioner Mehran
In CP No. D-2558/2024

Through Chaudhry Saeed-uz-Zaman
advocate

Respondents:
Province of Sindh & others

Ms. Saima Imdad, Assistant AG
Mr. Raza Mian, DSP (Legal-II) CPO

ORDER

Nisar Ahmed Bhanbhro, J: Through **Constitutional Petition No. D-1759 of 2024**, the petitioner **Amir Khan** has claimed following relief: -

- i. *To hold and declare that the impugned order dated 14.12.2023 is illegal, unlawful, unconstitutional, quorum non judice and non-est; consequently, to set aside the same for the petitioner.*
- ii. *To direct the respondents to issue appointment letter / order in favour of the petitioner for the post of Traffic Police Constable (BPS-05) as he has qualified all the physical, medical / written tests and completed all the other codal formalities.*

2. Through **Constitutional Petition No. D-2558 of 2024**, the petitioner **Mehran** has claimed following relief: -

- a. *To direct the respondents No.1 and 2 to rectify the CRO of the petitioner.*
- b. *To remove the name of the petitioner from disqualification order as no criminal case is pending against the petitioner in any Court of law.*

- c. *To direct the respondents No.1 and 2 to recruit the petitioner as Police Constable (BPS-05) in Traffic Police Karachi (Karachi Range).*

3. Mr. Dur Muhammad Shah, learned counsel for the petitioner Amir Khan has contended that respondent No.1 vide publication invited applications for the post of Police Constables (BPS-05) in Traffic Police Karachi Range, the petitioner being eligible, applied for the post of Police Constable, for which the petitioner successfully qualified all the requisite tests and interview; that vide letter dated 18.1.2023, the petitioner was declared the successful candidate and was to be issued appointment letter / order; that the petitioner cleared the medical test and other formalities. It is further contended that respondent No.5 vide order dated 14.12.2023, disqualified the petitioner from the recruitment process as during police verification it was found that one FIR vide crime No.46 of 2017 was recorded against the petitioner as accused malafidely and in the said crime the petitioner was acquitted under Section 345(6) Cr.P.C.; that inspite of above position, the respondent No.5 vide impugned order dated 14.12.2023 declined to recruit the petitioner in police department being shady record; that rejection of the appointment of the petitioner is unjustified as the stigma shown against him has been removed through order dated 06.4.2017 passed by the concerned trial Court. He lastly prayed to allow this petition.

4. Chaudhry Saeed-uz-Zaman, learned counsel for the petitioner Mehran has contended that the petitioner applied for the post of Police Constable in Traffic Police, Karachi (Karachi Range), he appeared in physical and written tests and passed all the requirements thereof; that in the month of December 2023, it came in the knowledge of the petitioner that respondent No.2 issued a disqualification order and the name of the petitioner was mentioned in the list at Sr. No.11, which disqualification is based on the criminal record being found against the petitioner. Learned counsel further contended that the petitioner's CRO still painted towards the case against the petitioner, even though the petitioner was acquitted from the said criminal case under Section 345(6) Cr.P.C. vide order dated 02.7.2022 and at present no criminal case is pending against the petitioner in any Court of law, hence the petitioner has prayed for allowing his petition.

5. Learned Assistant Advocate General (AAG) opposed the stance of the petitioners. She contended that though the petitioners successfully qualified the required tests and were recommended for appointment to the post of Police Constable, but they were found involved in a criminal case, therefore,

their case was rejected by the Competent Authority. Learned AAG further contended that the police department performed sensitive duty, police were saddled with the responsibility to maintain law and order, therefore, the good conduct was a pre-condition for appointment in police service, which petitioners failed to fulfill. She, therefore, prayed for dismissal of the instant petitions.

6. We have heard the learned counsel for the parties and examined the material available on record.

7. Meticulous perusal of the record revealed that the petitioners were found eligible for appointment to the post of Police Constable in Traffic Police Karachi Range. The case of the petitioners for appointment was rejected on the ground that they were involved in criminal cases mentioned above. Record further reveals that vide order dated 06.7.2017, petitioner Amir Khan was acquitted under Sections 345(6) Cr.P.C. by learned XVI-Civil Judge / Judicial Magistrate, Karachi West and the petitioner Mehran was also acquitted under Section 345(6) Cr.P.C. vide order dated 02.7.2022 passed by learned XI-Judicial Magistrate, Karachi South. It is for the reasons the proposition of law holds the field that an accused is presumed to be innocent until found guilty through pronouncement by the Court of law.

8. The Sindh Civil Servants Act, 1973 (the Act) is the governing law regulating the service of a civil servant in the province of Sindh. Under the provisions of the Act, there was no impediment to refuse appointment to a person otherwise eligible for induction, if he was involved in any criminal case. Section 15 of the Act places an embargo on induction of person in civil service who was a convict of an offence of moral turpitude. The bar contained in Section 15 of the Act is not absolute in nature, as the Act confers discretion to the Government to induct even a convict in government service, if so desired. The registration of a criminal case was not a sufficient proof of the guilt of moral turpitude in absence of the verdict of the competent Court of law holding the person facing accusation was guilty of the charge. Section 15 of the Act reads as under:

“15. No Person convicted for an offence involving moral turpitude shall, unless Government otherwise direct, be appointed to a Civil Service or Post.”

9. The perusal of above provision of law made it crystal clear that the disqualification for appointment to Civil Service or post attracts only in case when aspirant / candidate is convicted in an offence involving moral

turpitude. There existed no statutory provision of law impeding the appointment of a person to a Civil Service or Post if found involved in a criminal case.

10. Section 15 excludes a person from right to appointment who is convicted under the charge of Moral Turpitude. The petitioners were involved in an ordinary nature offence having no nexus with any issue harming the society. Moral turpitude includes anything which is done contrary to the good principles of morality, any act which runs contrary to justice, honesty, good moral values or established judicial norms of a society. The modern notion of proportionality requires that the punishment ought to reflect the degree of moral culpability associated with the offence for which it is imposed. In order to render punishment compatible with justice, it is not enough to restrict punishment to the deserving, but also to restrict the degree of punishment to the degree that is deserved. The degree of wrongfulness is described variously as the "moral culpability", "gravity" or "depravity" associated with the offence. Therefore, along with the gravity of the misconduct, interference on the grounds of proportionality in the penalty imposed for misconduct is also assessed in view of the depravity or moral culpability associated with the same. The test of proportionality is, therefore, more stringent in cases of misconduct involving moral turpitude in view of the depravity or moral culpability involved. The expression "moral turpitude" has been defined in Merriam Webster Dictionary as follows: "an act or behavior that gravely violates the sentiment or accepted standard of the community or a quality of dishonesty or other immorality that is determined by the Court present in the commission of a criminal offence."

11. The disqualification for appointment to Civil Service or post attracts only, when aspirant candidate is convicted of an offence involving moral turpitude. The interpretation of law as has been done by the SPRB was very dangerous and if applied ipso facto then it will be applicable even to the persons already in police service, which will create hurdle in the job career of serving police officers as they could stand disqualified on account of registration of a criminal case against them, which in fact was not the command of law, intent and wisdom of the legislature.

12. In the case of Abdul Rashid Mughal v. Muhammad Shabbir Abassi reported as **1984 SCMR 1172**, the Honorable Supreme Court of Pakistan enunciated the following principle to dub a person convicted of an offence of moral turpitude. It was held that:

“It is obvious that in the absence of any legal evidence learned Judges were somehow persuaded to hold, merely on the basis of the contents of the F.I.R., that appellant was convicted for an offence involving moral turpitude. Unfortunately they failed to notice that both the documents produced in support of the allegations against appellant, namely, F.I.R. and certificate from Deputy Superintendent, District Jail, Rawalpindi, were inadmissible evidence and, by themselves, furnished no proof upon which a conclusion could be drawn, much less a judgment rendered, that appellant was held guilty and convicted for an offence involving moral turpitude. The judgment of the High Court having been based on conjectures rather than any legal evidence is set aside and the appeal is allowed. The parties are, however, left to bear their own costs.”

13. This Court has already decided the issue regarding appointment of candidate(s), who were involved in criminal cases and were acquitted by the trial Court in C.P No.D-1754 of 2023 (Gulab versus Province of Sindh and others) and C.P No.D-966 of 2023 (Ghulam Abbas versus Province of Sindh and others). Learned Apex Court in the cases of Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan (PLD 2010 SC 695) and Dr. Muhammad Islam v. Government of NWFP through Secretary, Food, Agriculture, Livestock and Cooperative Department Peshawar and 2 others (1998 SCMR 1993) has been pleased to hold that the acquittal of an accused after full-fledged trial was always treated as an honourable acquittal and mere involvement of a person in a criminal case cannot deprive him of his right to appointment in civil service, more particularly when a final verdict of innocence on merits has been given by the Courts of law.

14. The SPRB was misled in holding that involvement of a person in FIR would disentitle him from appointment in police service. No doubt police force was saddled with responsibility to wipe out crime from the society and observance of the Good Conduct was a pre-condition for induction in police service, but such a pre-condition did not mean to rob the rights of the individuals which accrued in their favor by operation of the law.

15. It has been noticed in a number of cases that the SPRB rejects the recommendation for appointment of candidates in police service on account of registration of criminal cases. The individuals are denied the right to appointment even in the cases where trial court acquits them for want of sufficient evidence. Such practice on the part of SPRB was untenable, unwarranted under the law and without any lawful authority, thus cannot hold field. This unwarranted practice on the part of SPRB has resulted in filing of the petitions before this Court, which resulted in wastage of time and financial loss to the aggrieved person. Under the seminal principle of

trichotomy of powers the Legislative is saddled with responsibility of making laws, Court to interpret and executive to implement the same. Learned Apex Court and this Court in number of cases have interpreted the application of Section 15 of the Sindh Civil Servants Act, 1973 in appointment matters and have held in unison that mere registration of FIR was no sufficient ground for refusal of induction in service. The SPRB being an authority discharging its functions in connection with the affairs of province for recruitment in police department was under an obligation to follow the principle of law enunciated by the Superior Courts. It is expected that SPRB shall follow the decision of the superior courts in future in the matters of recruitment in police department, and would help the Courts to curtail the unnecessary litigation burden.

16. Recruitment process is an internal mechanism of the concerned department. This Court sparingly interferes in matters of recruitment and does step in only in the cases where it surfaced on record that the authority failed to exercise its powers vested in it or exercised the powers beyond the bounds of law. The petitioners were recommended for the post of Police Constable in the Traffic Police which did not require any special qualification. The rejection of their appointment by SPRB on account of registration of FIR went outside the circle of its powers carved out under the statute. In the case of the petitioners, SPRB the appointing authority, acted in gross violation of law that resulted in impinging upon the fundamental rights of the petitioners, thus a case for the exercise of the powers of judicial review is made out.

17. For what has been discussed hereinabove, we are of the considered view that the decision of the Sindh Police Recruitment Board rejecting the candidature of the petitioners for appointment as Police Constable in the Traffic Police on account of the registration of FIR was beyond the bounds of law, thus not sustainable, warranting interference of this Court to exercise powers of judicial review conferred under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Consequently, these petitions are allowed. The impugned order dated 14.12.2023 passed in the case of petitioner Amir Khan and the impugned order dated 14.12.2023 passed in the case of petitioner Mehran is hereby set aside. The offer order for appointment issued in favor of the petitioners is restored. Respondents are directed to issue Appointment Order of Police Constable in the Traffic Police, Karachi, Karachi Range in favour of the petitioners Amir Khan and Mehran within a

period of 60 (Sixty) days from the date of this order. Petitioners shall be entitled for the service benefits with effect from the date they join the service.

18. The petitions stand disposed of with no order as to the costs.

Office is directed to send a copy of this order to the respondents, for compliance.

JUDGE

HEAD OF CONST. BENCHES

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