

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 3638 of 2014

Muhammad Saad & others.....Petitioners

Versus

Province of Sindh & others.....Respondents

C.P No. D- 3889 of 2014

Muhammad Waris & othersPetitioners

Versus

Province of Sindh & others.....Respondents

C.P No. D- 4085 of 2014

Waseem Abbas & othersPetitioners

Versus

Province of Sindh & others.....Respondents

C.P No. D- 4027 of 2015

Saddam Hussain Khan & othersPetitioners

Versus

Province of Sindh & others.....Respondents

C.P No. D- 787 of 2016

Muhammad Imran Khan & othersPetitioners

Versus

Province of Sindh & others.....Respondents

C.P No. D- 1231 of 2016

Faraz Akhtar Ali & othersPetitioners

Versus

Province of Sindh & others.....Respondents

Dates of hearing: 27.11.2018 & 10.12.2018

M/s. Abdul Salam Memon, Hussain Bakhsh Saryo, Mohammad Tamaz Khan advocates for the Petitioners in all petitions.

Mr. Shahriyar Mehar, AAG a/w Ms. Shamin Imran, Ms. Humaira Jatoi internees of AG office and Mr. Raza Mian, DSP on behalf of the Inspector General, PDSP Farid Ahmed from DIGP West Zone, ASI Babar Mughal from DIGP West Zone, Karachi.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- All of the above referred Constitutional Petitions are being disposed of vide this Single Judgment, as common questions of law and facts are involved therein.

2. Basically the Petitioners have approached this Court seeking directions to the Respondent-Police department to issue them Appointment Letters for the post of Police Constables (BPS-05) in Sindh Police. Per Petitioners, they had qualified the physical test, written test, and interview and their names have appeared in the Final Merit List of the successful candidates, for the appointment on the aforesaid posts. Petitioners have submitted that after lapse of considerable time the Respondents could not issue them Medical and Appointment Letters then they approached them and came to know that the Respondents had already issued Appointment Letters to their blue-eyed candidates, on political consideration. Per Petitioners, those candidates did not succeed in the physical and written test and some of them had even been shown failed in the Final Merit List. Petitioners raised their voice of concern against the Respondents, who provided latitude to those candidates by granting additional marks, who were their near and dear ones and asked for taking cognizance in the matter. Petitioners have submitted that due to the grant of aforesaid concession Petitioners have suffered. Petitioners being aggrieved by

and dissatisfied with the aforesaid actions of the Police Department has filed the instant petitions.

3. Mr. Abdul Salam Memon, learned counsel for the Petitioners has argued that the Respondent- Police Department have issued appointment letters to the various candidates, at the place of the Petitioners; that the Petitioners had qualified the physical, written test as well as interview and were eligible to be given medical letters and appointment orders. At this stage, we queried from the learned counsel for the Petitioners as to how they are claiming appointment against the posts of Constables, when they did not succeed/compete with other candidates, whose names have appeared in the final merit list. He in reply to the said query has submitted that the Respondent-Police Department had granted grace/additional marks to the other candidates on the purported plea of having better qualification than the Petitioners; that those candidates were their blue-eyed that's why the Petitioners were ousted from the competition. He further added that the attitude of the police department by awarding the grace/additional marks to other candidates is discriminatory, which is prohibited under Article 25 of the Constitution. He next added the Petitioners are entitled to be considered for the post applied for at the time of their initial appointment; that the Respondents have violated the rights of the Petitioners by failing/delaying to issue appointment letters, despite the fact that the Petitioners have successfully passed the prescribed examination and interview; that after successfully clearing the examination and interview, the Petitioners have acquired a vested right and interest to be appointed on the post of Police Constable BPS-05, which cannot be nullified/denied by whimsical and arbitrary actions of the Respondents; that the action of the Respondents is in violation of the Fundamental Rights of the

Petitioners as guaranteed under Articles 18, 24, 25 and 27 read with Articles 4 and 8 of the Constitution; that due to omission/failure of the Respondents to fulfill their legal obligations and timely discharge of their duties/functions, the Petitioners are being deprived of their lawful rights to be considered for appointment against the post of Police Constable in BPS-5; that the Petitioners have completed all the codal formalities viz. physical test, written test, interview, via-voce test and have also paid the required fee for medical fitness; that the Petitioners are holding domicile of Karachi therefore the Petitioners' right to seek job is their fundamental right for the particular post and that cannot be snatched away by the Respondents, which is violative of principles of natural justice. He lastly prayed for allowing the captioned petitions.

4. Mr. Mohammad Tamaz Khan and Mr. Hussain Bukhsh Saryo have adopted the arguments of Mr. Abdul Salam Memon learned counsel representing the Petitioners in C.P No.D-3638 of 2014.

5. We have noticed that this Court vide order dated 07.3.2018 observed that Mr. Shariq Naveed learned counsel, who represented the Petitioners in C.P. No.D-4085/2014, submitted that he would adopt the arguments of Mr. Abdul Salam Memon, learned counsel for the Petitioners in the connected Petitions.

6. Mr. Shahriyar Mahar, learned AAG representing the Respondents has raised the issue of maintainability of the captioned Petitions and argued that as per advertisement, the required post of police Constable BS-05 had to be filled and the Petitioners had to meet the criteria as set forth in the Recruitment Rules for which Petitioners were well aware of that they did compete and have failed to achieve the required marks; that a

proper committees were constituted, who interviewed the successful candidates and after completion of interview process merit list was duly displayed in the office of DIG West Zone Karachi. He next added that after consolidated zonal merit list of all zones of Karachi, final merit list was issued and only thereafter the candidates were appointed. He next added that all the Petitioners have failed to compete, in the final merit list, therefore, they were not considered for the appointment against the post of Police Constable. He further added that no violation deviation from Recruitment Rules/ Policy has been made, which may prejudice the case of the Petitioners. In support of his contention, he relied upon the list of 510 successful candidates before this Court and argued that the Petitioners did not meet with threshold as set forth by the Committee, in view of the Standing Order issued by the IGP Sindh; that this Court has no jurisdiction to interfere in the appointment process initiated under the Recruitment Rules / Policy; that there is no discrimination meted out with the Petitioners; that there is reasonable classification protected under the law and the Constitution, which is out of the purview of Article 199 of the Constitution; that Petitioners did not qualify the terms and the conditions as set forth in the recruitment Rules/ Standing Order. He lastly prayed for dismissal of the instant petitions.

7. We have heard the parties at length and have considered their submissions and have perused the record.

8. First of all, we take up the issue of the maintainability of the instant Petition under Article 199 of the Constitution. We are of the view that the grievance of the Petitioners does not relate to the terms and conditions of service, but they have sought relief of appointment, therefore the Petition is not barred by Article 212 of

the Constitution and is maintainable to be heard and decided on merits.

9. In our view, important question of law is involved in the subject Petitions which is as follows:

i) Whether Petitioners can claim appointment as police constables in BPS-5, in Sindh Police on the basis Standing Order No.213 of 2007 issued by Inspector General of Police, Sindh under Section 12 of the Police Act-1861?

10. Perusal of the record reflects that the Respondent-Police department initiated the process of recruitment of vacancies of Police Constables in BS-05, to be filled on merit on the regional quota basis, particularly for Karachi Range.

11. Firstly to address the aforesaid proposition, we have to look at the matter in its entirety to understand and appreciate the legal position of the case, since much emphasis has been laid on the Standing Order No.213 of 2007. It would be convenient to have a look at the relevant portion of the aforesaid Standing Order, which provides that the Capital City Police Officer or Capital City District Karachi/District Police Officer can add/award the following additional marks to the candidates, who possess following extra qualifications/experience at the time of interview:-

S. No.	Additional Qualification/Experience	Marks
01	Intermediate	05
02	Graduation	07
03	Master Degree	10
04	Sportsmen (Board Level 07, Provincial Level: 10 Marks & National Level: 15 Marks)	07, 10 & 15
05	Sons/Daughters of serving or retired Policemen-staff of Police Department (Only one claim allowed)	10

12. Bare perusal of the contents of the aforesaid Standing Order, which explicitly show that upon acquiring better qualifications, additional marks can be awarded to the deserving candidates,

besides the candidates have secured marks in the physical and written tests and crossed the threshold as set by the Police department for the post of Police Constables, thus in our view, the aforesaid additional marks, on acquiring additional qualification/experience by the candidates, can be awarded to the candidates, which cannot prejudice the case of anyone. Therefore the apprehension and assertion of the learned counsel for the Petitioners is totally misconceived and not tenable under the law.

13. On merits, we have noticed that the Competent Authority of the Police Department, allocated following number of vacancies for the purpose of aforesaid recruitment process-2014 vide letter dated 20.03.2014, which shows the following vacancy position:-

**SINDH POLICE
KARACHI RANGE**

S #	Name of the District	Approved Vacancies
01	Karachi South	500
02	Karachi Malir	550
03	Karachi West	350
04	Karachi East + Korangi	225
05	Karachi Central	160
Total		1785

14. For our satisfaction, record of aforesaid recruitment process for the post of police constables was summoned by this Court. Learned AAG pursuant to order passed by this Court on 17.05.2016 submitted record which also contains the list of the Petitioners, allocations of marks obtained by them and successful candidates, who were later on appointed on the aforesaid posts. It has come on record that on selection of the successful candidates, in the Districts of Karachi range, a formal approval of the Competent Authority was given to Additional IGP/Karachi range for issuance of offer letters to the successful candidates vide letter dated 13.6.2014.

15. The grievance of the Petitioners is that they applied for the aforesaid posts, for the vacancies occurred in Karachi range, moreover, after conducting physical test, written test, and interview, the result of successful candidates were submitted by the committee to the Competent Authority for preparation of the zonal wise merit list. Per Petitioners they obtained qualifying marks and were entitled for issuance of offer letters for the post of Police Constable in the Districts of Karachi range.

16. To elaborate on the aforesaid plea of the Petitioners, we have taken efforts to go in deep in the matter to ascertain as to whether any irregularity or illegality has been committed by the Respondents or otherwise.

17. Upon perusal of the record i.e. list of successful candidates and other material produced before us; we have noticed that the candidates who were declared eligible for appointment for the post of Police Constable obtained more than 144 marks than all the Petitioners. We have not been able to find out any candidate who secured lesser marks than the Petitioners who was being considered or selected and recommended for the aforesaid posts.

18. The Respondent-Police Department has taken the plea that they had allocated additional marks to the candidates in the light of Clause-IV of Standing Order No.213 of 2007 as discussed *supra*. Since we have already dilated upon the award of additional marks in the preceding paragraph, no further discussion is required on the aforesaid issue.

19. Reverting to the plea taken by the learned counsel for the Petitioners that IGP, Sindh was not empowered to issue standing orders to award additional marks to the candidates.

20. To elaborate further on the aforesaid plea of the learned counsel for the Petitioners. We need to see the legal status of the aforesaid Standing Order, which was issued by the Inspector General of Police, in exercise of powers conferred under Article 10 (3) read with Article 26 of Police Order, 2002. Per learned AAG, the IGP Sindh is/was empowered to issue the Standing Orders under Section 12 of the Police Act, 1861. At this stage, Mr. Abdul Salam Memon, learned counsel for the Petitioners has objected to the submission of the learned AAG on the premise that the aforesaid Standing Order issued by the IGP has no sanctity in the eyes of law as the same had not been approved by the Provincial Government, more particularly the Police Order, 2002 has already been repealed in the year 2010. Learned AAG has refuted the claim of the learned counsel for the Petitioners on the premise that when the Standing Order was issued in the year 2007, the IGP was empowered under the law, therefore, the Respondent-Police Department had rightly allocated additional marks to the candidates, as provided under the aforesaid Standing Order. Apparently, the learned AAG has not been able to refer to any document to substantiate his submission that the said Standing Order was approved by the Provincial Government as required under Section 12 of Police Act, 1861. However, we would like to go through the relevant portion of Section 12 of Police Act, 1861. An excerpt of the same is reproduced as follows:

“12. Power of Inspector-General to make Rules:
The Inspector-General of Police may, from time to time, subject to the approval of the [Provincial Government], frame such orders and rules as he shall deem expedient relative to the organization, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be formed by them; their inspection, the description of arms, accoutrements and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information, and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty,

and for rendering such force efficient in the discharge of its duties.”

21. Section 12 of the Police Act, 1861 reproduced supra leaves no room or ambiguity as to the fact that police force is commanded by the Inspector General of Police, who has the powers to frame Orders and Rules with regard to recruitment, organization, classification and distribution of Police Force, subject to the approval of the Provincial Government. In other words, the aforesaid Provision enables the Inspector General of Police to cater to a situation where it is expedient for him to issue such orders and make such rules as required to meet the contingencies with the approval of the Provincial Government.

22. We are fortified by the judgment rendered in the case of Gul Hassan Jatoi & others vs. Faqir Muhammad Jatoi & others (2016 SCMR 1254) in which Hon'ble Supreme Court has held that the Standing Orders issued by the Inspector General of Police have to be approved by the Provincial Government. At this stage learned AAG has drawn our attention that the recruitment process for the aforesaid posts were initiated in the year 2013-2014, whereas the judgment rendered by the Honorable Supreme Court was given in the year 2016, therefore the said judgment will not help the case of the Petitioners, which has no retrospective effect. Be that as it may, we have to see the final merit list to ascertain as to whether the candidates who have secured lesser marks than the Petitioners have been appointed or otherwise.

23. Record does not reflect that the candidates who have been selected and offer letters have been issued to them had obtained lesser marks than the Petitioners. It has also come on record that the most suitable candidates, who obtained more than 144 marks, were appointed. As per record the Petitioners have obtained lesser

marks than the candidates who were declared successful in the light of Police Rules 12.14 of Rules 1934. Record does not show any malfeasance and misfeasance on the part of Police-Department to claim appointment for the post of Police Constables. As per record, they did not meet the criteria for the aforesaid posts, therefore, we cannot direct for their appointment for the post of Police Constable.

24. In the light of foregoing facts and circumstances of the case, we do not see material irregularities, illegalities in the recruitment process 2013-2014, the Committees on thorough examination of the documents and antecedents of the Petitioners and other candidates found the Petitioners not successful candidates for the post of Police constables. Therefore, we find no justification to substitute our findings on the findings of the committees constituted for selection of the candidates for the aforesaid posts. The committees conducted the scrutiny of the documents of all the candidates as per rules; therefore at this juncture, we do not see any discriminatory treatment was meted out with the Petitioners in the selection process referred hereinabove.

25. In view of the aforesaid facts and circumstances of the case the Petitioners have failed to make out their cases for appointments.

26. In our view mere selection in the written test / viva voce does not make them entitled for the post applied for, for the simple reason that hundreds of candidates were selected in the interview and test and only those candidates who obtained higher marks were selected.

27. Mr. Abdul Salam Memon has also pointed out that the marks given to the other candidates through the standing order is

against the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of ***Gul Hassan Jatoi & others vs. Faqir Muhammad Jatoi & others (2016 SCMR 1254)***. This assertion of the learned counsel is misconceived as the standing order provided the recruitment procedure only, whereas, the marks assigned to other candidates were provided under the police rules as well, therefore, we cannot accept the plea of the Petitioners that they have been discriminated on this score alone, as the law provides the aforesaid action, hence the question of discrimination hardly arise.

28. In absence of aforesaid material, the Petitioners have thus failed to make out a case of appointment as police constables in Sindh Police. The entire case of the Petitioners is based upon factual assertions, which cannot be given sanctity.

29. In view of the foregoing discussion, the Petitioners have failed to make out their cases on the aforesaid grounds, thus, the captioned petitions are devoid of merit and are dismissed along with the listed applications.

Karachi
Dated: 13.12.2018

JUDGE

JUDGE

S.Soomro/PA.