

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P No. D-902 of 2019

Syed Ghazanfar Hussain & others Petitioners

V/s

Province of Sindh & others Respondents

Date of hearing: 23.04.2019

Date of Order: 23.04.2019

Mr. Abdul Jalil Khan Marwat Advocate for Petitioners

Mr. Abdul Jalil Zubedi, Assistant A.G.

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the

Petitioners are seeking following relief(s): -

“It is therefore prayed that this Honourable Court may be pleased to direct the respondents to re-issue the fresh list showing all the above PASSED Petitioners as PASS and to show and give the reasons of issuing incomplete and illegal Interview List.

It is further respectfully prayed that the actions may please be taken against all the responsible according to law of the land.”

2. Brief facts of the case in nutshell are that, in pursuance of advertisement published in Daily Jang dated 3.12.2017, inviting applications for recruitment of Driver Police Constables (BS-5) in Sindh Police Department, in different Ranges of Sindh. Petitioners applied for the post of Driver Police Constable (BS-5) from Karachi Range. As per Petitioners, Respondents started recruitment process, after processing the applications of the Petitioners through competitive process i.e. NTS on 11.3.2018, the Respondents conducted physical and written test and after

conducting the physical test, written test and interview/Viva-voce, the Respondent No.3 issued a final merit list of successful candidates for the post of Driver Police Constable, in Karachi Range vide result dated 7.12.2018, showing the petitioners as failed candidates in the recruitment process for Driver Police Constables (2017-2018). Petitioners further claim that they having successfully qualified the written test through NTS and interview had legitimate expectation of appointment for the post of Driver Police Constable in BS-05. The Petitioners have asserted that they have been singled out in the recruitment process for the posts of Police Constables. Petitioners have submitted that the act of Respondent-Police department tantamount to circumvent the law and sabotage the merit on their own whims, which has no sanctity in law and the same, is without lawful justification. Petitioners being aggrieved by and dissatisfied with the aforesaid actions of the Respondents have filed the instant Petition.

3. Upon notice, the RespondentNo.3 filed para wise comments and denied the allegations.

4. We have asked from the learned counsel for the petitioners that how this petition is maintainable, when the petitioners failed in the Driving Test for the process of recruitment of Driver police constable.

5. Mr. Abdul Jalil Khan Marwat, the learned counsel for the Petitioners in reply has contended that the Respondents have violated the rights of the Petitioners by showing them as failed candidates for the post of Driver Police Constable, despite the fact that the Petitioners have successfully passed the prescribed examination and interview and action. We put another query to learned counsel for the petitioners that since no appointment orders had been issued, how vested right has accrued in favour of

the petitioners. Learned counsel has replied that after successfully clearing the examination and interview, the Petitioners have acquired a vested right and interest to be appointed on the post of Driver Police Constable BS-05, which cannot be nullified/denied by the whimsical and arbitrary actions of the Respondents; that the Respondents are acting in violation of the prescribed Rules as mentioned under the terms of Rule 4 of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974, where Respondent-Police department is the competent authority for appointment of the candidates; that the action of the Respondents is in violation of the Fundamental Rights of the Petitioners guaranteed under Articles 18, 24, 25 and 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 Driver Police Constable (BPS-5); that the purported list dated 07.12.2018 showing the petitioners as failed is discriminatory and against the fundamental rights of the Petitioners thus not sustainable in law; that the Petitioners have completed all the codal formalities viz physical test, written test, interview, viva-voce test and have also paid the required fee; 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 which is violative of principle of natural justice; that the Petitioners have the right to seek appointment and the Respondents cannot curtail such rights of the Petitioners as guaranteed under the Constitution; that the Respondents are acting beyond the mandate of law; that As per directions of Respondent No.2 through letter No.16681-97/EB-III/T-7/S&S Karachi dated 15.12.2018, meeting of Sindh Police Recruitment

Board comprising of Respondents No.5, 6 and 7 was convened and in paragraph 7, it was decided that “two chances for driving test to be given to the candidates who fails in first attempts and in case he does not qualify 2nd time he may be considered for the post of Constable in the same recruitment process.” In this regard, on 05.1.2019, all the Petitioners sent written application to the concerned authorities including all Respondents, but till date no reply was given from the Respondents, thus the petitioners are not at fault. He lastly prays for allowing the instant petition.

6. Mr. Abdul Jalil Zubedi, Assistant Advocate General, Sindh has raised the question of maintainability of the instant petition and argued that the petitioners failed in the recruitment process due to the reasons mentioned in the comments of Respondent No.3, therefore no fundamental right of the petitioners have been infringed. He lastly prayed for dismissal of the petition.

7. 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.

8. On merits, the grievance of the Petitioners is that they having successfully qualified the written test through NTS and interview had legitimate expectation of appointment for the post of Driver Police Constable in BS-05.

9. Perusal of the record reflects that the Respondent-Police department initiated the process of recruitment of vacancies of Driver Police Constables in BS-05 to be filled on merit on the regional quota basis, particularly for Karachi Range (2017-2018).

Record further reflects that Petitioners were not declared successful candidates for the post of Driver Police Constable. We have gone through the comments filed on behalf of the Respondent No.3, wherein he has stated that the driving test and interviews were conducted from 03.12.2018 to 07.12.2018 at Police Headquarters, Garden, South Zone, Karachi, in presence of the members of Police Recruitment Committee, including Deputy Chief and Assistant Chief of CPLC Sindh Karachi, in a quite transparent manner. Learned AAG has emphasized that during driving test 37 candidates including the Petitioners were declared failed by the Recruitment Committee, as they drove the vehicles in an immature and unprofessional manner and hit the boundary cone during the test; that the list of candidates, who passed the driving test and qualified for the next phase of interview, was displayed on notice board in Police Headquarter and the names of 37 candidates including the Petitioners were not included, as they could not qualify the driving test.

10. Reverting to the main question raised by the learned counsel for the petitioner that the issue of second chance to the candidates who failed in first attempt in Driving and in case he does not qualify 2nd time, he may be considered for the post of Police Constable in the same recruitment process. We do not agree with the assertion of the learned counsel for the simple reason that the post of Driver Police Constable is a very sensitive, responsible and critical job. The Driver is not supposed to operate a vehicle, if he is not adept in driving and the police department needs well trained and confident drivers so as to ensure safety and security of public at large that cannot be compromised at any cost. Having seen the aforesaid factual and legal position of the case, we are of the considered view that the question of giving second chance to the candidates, who failed in the Driving Test and subsequently

declare them as successful candidates, is erroneous decision, thus not sustainable under the law.

11. On the basis of respective submissions advanced, this Court finds that following issue arise for consideration in the petition:-

i) Whether the Petitioners have acquired any right of appointment pursuant to advertisement issued for recruitment of Driver police constable in BPS-5 in Karachi Range, or to be considered for appointment, in accordance with the rules existing on the date of advertisement?

12. To address the aforesaid question, let us shed light on the policy for recruitment of police constables in Sindh Police-2016. Per learned AAG the same has been framed and approved under the directives of the Hon'ble Supreme Court of Pakistan in Civil Petition for leave to appeal No. 634-K of 2016, 6345-K of 2016 and 644-K of 2016 to 646-K of 2016 vide order dated 26.12.2016. Policy No. 4.1.6 provides as under:-

“Candidates who meet following eligibility criteria will be considered for the recruitment as Constable in any of the executive establishment of Sindh Police” Age Educational qualification Height (minimum) Chest (male candidate only) Male / Female 18-25 Matriculation 5-5” / 5 33-Min with 1.5” Expansion”

13. The aforesaid Recruitment Rules clearly depict that the post of police Constable in BS-05 in all units of Sindh Police can be filled in the aforesaid manner.

14. Upon perusal of the order dated 26.12.2016 passed by the Hon'ble Supreme Court of Pakistan in the aforesaid matters has held as under:-

“The Sindh Government has submitted report containing the proposal for consideration the reinstatement/ appointment of the Respondents in Civil Petitions No. 634-K of 2016, 635-K of 2016, 644-K of 2016, 645-K of 2016 and 646-K of 2016. The Respondents are represented by the learned counsel present in Court. The proposed policy is reproduced as under:-

“1. A Centralized Re-examination Committee may be constituted headed by an officer of the rank of Addl. IGP/DIGP to supervise reexamination process.

2. All candidates who were irregularly appointed during year 2012 to 2015 and subsequently dismissed/discharged from service may be directed to appear in re-examination test.

Such opportunity should be widely published in three leading national daily newspapers.

3. The Re-examination should be done by a following all steps adopted for recruitment of Constable in the years 2016 in Sindh Police in the light of Recruitment Policy 2016 issued vide No. EBIII/T.7/S&S/14805-60 dated 04.08.2016 (Copies enclosed) All physical test will be conducted under the supervision of the Re-examination Committee with same eligibility criteria for recruitment of Constables in 2016 and Written Test will be conducted by NTS. However, following exemptions may be granted.

i) Age of the candidates will be determined on the basis of closing date of application when they were actually recruited.

ii) The Centralized Re-examination Committee may decide the exemption/leniency of running test to the deserving cases after recording specific reasons.

4. The existing policy for the domiciles of candidates derived from Rule 15 of Sindh Civil Servants (APT) Rules, 1974 may be followed during re-examination.

2. In addition to the aforesaid policy, they have submitted a statement modifying the language of sub-Clause-ii of Clause 3 of the Policy, which is reproduced as under:-

“The Centralized Re-examination Committee may grant the exemption of running test to those candidates, who were injured or suffered from any medical problem during their service in Police department.”

3. The Advocate General, Sindh on instructions states that re-examination criteria by the Committee will be identical to that of Policy for Recruitment of Constables in Sindh Police framed by the Sindh Police and approved by the Sindh Police Management Board. It is further stated that each and every clause of the policy would be applicable to the Respondents for the purposes of their eligibility, qualifications and physical test. The Respondents have no objection and consent to the disposal of these proceedings in terms of the aforesaid arrangement proposed by the Sindh Government.

4. All these petitions are converted into appeal and allowed in the aforesaid terms.

5. The learned Advocate General, Sindh states that Centralized Re-examination Committee shall be headed by Sanaullah Abbasi, Additional Inspector General of Police and the members of the Committee shall comprise of two officers for the rank of DIG and two officers of the rank of SSP. Recruitment process shall be initiated after advertisement given in the widely published newspapers of English, Urdu and Sindh. This recruitment will be confined only to the police personnel, who were employed from 2012 to 2015 and were dismissed/discharged or removed from service. No any other candidate shall be part of this. This entire process shall be completed within three (03) months from today and a compliance report shall be submitted by the Inspector General of Police to the Office Incharge Assistant Registrar of this Registry for our perusal in Chambers.”

15. In the light of forgoing, we are of the considered view that even a successful candidate does not acquire indefeasible right to

be appointed and that it could be legitimately denied. The notification inviting application for appointment has been held only to be an invitation to the qualified candidates to apply for recruitment. On their mere applying or selection they do not acquire any right to the post. The police Department is under legal duty to fill up all or any of the vacancies in Police Force, strictly in accordance with the recruitment rules and not otherwise, even the respondents cannot relax the qualification for the post of Police Constable in BPS-5 as provided under the law.

16. There can be no doubt that the Petitioners merely on account of making of applications for appointment do not acquire any right of appointment to the post. In our view, the mere saying that Petitioners were selected for appointment to vacancies, pursuant to an advertisement is not sufficient to discard the version of respondents that they failed in the Driving Test, even otherwise the same did not confer any right to be appointed to the post in question to entitle the selectees to a writ of mandamus or any other writ compelling the authority to make the appointment.

17. In the light of above facts and circumstances of the case and for the reasons as alluded hereinabove, this petition merits no consideration which is accordingly dismissed in limini along with pending application(s).

JUDGE

JUDGE