

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Present

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon.**

C.P. No.D-2298 of 2018

Raza Muhammad & othersPetitioners

Vs.

Secretary Home Department, Sindh & othersRespondents

Date of hearing 19.03.2019

Date of Decision: 21.03.2019

Mr. Muhammad Ali Rind, Advocate for petitioners.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh
alongwith SIP Noor Muhammad for DIGP Hyderabad, Inspector
Zulfiqar for SSP Tando Muhammad Khan, SIP Muhammad Bux for
SSP Badin & Inspector Sohail Sarwar Jamali for SSP, Hyderabad.

J U D G M E N T.

ADNAN-UL-KARIM MEMON-J: - Through captioned petition, the petitioners seek issuance of direction to the respondents to issue them offer/appointment orders for the post of Driver Police Constables, having been declared successful candidates, as per the final merit list.

2. Brief facts of the case, as per pleadings 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 Hyderabad Range. As per Petitioners, Respondents started recruitment process, after processing the applications of the Petitioners through competitive process, in the month of December, 2017 on different dates, the Respondent No.3 conducted physical and written test and after conducting the physical test, written test and interview/Via-voice, the Respondent No.3 issued a final merit list of successful candidates for the post of Driver Police Constable, in Hyderabad Range vide result dated 13. 4.2018. But thereafter the Respondents declined to entertain the petitioners on the premise that the recruitment process for Driver Police Constables (2017-2018)

has been cancelled by the competent authority, being violation of recruitment policy of Sindh police vide letter dated 4.5.2018 with further assertion that the recruitment process will be reinitiated afresh. Petitioners further claim that they having successfully qualified the written test 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; that the Respondent-Police department has no authority or jurisdiction in law to cancel the recruitment process. Petitioners further added that they approached the Respondent-Police department for further process of recruitment, but to no avail. Petitioners averred that in terms of Rule 4 of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974, the Respondent-Police department is the competent authority for the appointment of candidates in BPS-05. Petitioners further added that Respondents are under legal obligation to complete the process by recruiting the successful candidates/ Petitioners; thus the Respondents have failed to recruit/ consider the Petitioners without any lawful justification or reason. Petitioners being aggrieved by and dissatisfied with the aforesaid actions of the Respondents have filed the instant Petition.

3. Upon notice, the Respondents 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 whole process of recruitment of Driver police constables has been scrapped on the allegations that the failed candidates in physical measurement (313) in subsequent process of written examination and interview were shown as successful candidates in the final merit list.

5. In reply thereto Mr. Muhammad Ali Rind, learned counsel for petitioners has argued 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 and action, if any, has to be taken only against those 313 candidates and not against all. We put another quarry 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 cancellation of recruitment policy 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, via-voce test and have also paid the required fee; that the Petitioners are holding domicile of Hyderabad therefore the Petitioners right to seek job is their fundamental right for the particular post and that cannot be snatched by cancellation of the recruitment process 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 petitioners are not at fault if any of the candidates were wrongly recommended for the post, the petitioners cannot be saddled responsible for others. He lastly prays for allowing the instant petitions.

6. Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh has raised the question of maintainability of the instant petition and argued that the recruitment process has been cancelled due to the reasons as discussed supra, therefore no fundamental right of the petitioners have been infringed. He lastly prayed for dismissal of the petition.

7. We have heard learned counsel for the parties and perused the material available on 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 Petitioner 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. On merits, the grievance of the petitioners is that recruitment initiated as per the rules then in force has not been concluded, and the Respondent-police department has arbitrarily discontinued the recruitment process, midway. The action of the Respondent-department in now proceeding to fill up such seats by a fresh process has been challenged. The grounds of challenge essentially are that the Respondent-department's decision to abort the ongoing recruitment process is otherwise vitiated, being arbitrary, irrational and actuated by political considerations which lack bona fide. The details of recruitment process initiated and discontinued, with reference to the year of advertisement, is enumerated hereinafter.

10. 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 Hyderabad Range (2017-2018). Record further reflects that Petitioners were declared successful candidates for the post of Driver Police Constable. We have gone through the press release dated 13.4.2018, which prima facie shows that the names of the Petitioners were appearing as successful candidates in the final merit list. Respondents in their comments have not denied that the petitioners do not possess the qualification for the post applied for, but the only reason which has been put forward is that the recruitment process for Driver Police Constables (2017-2018) has been cancelled by the competent authority being violation of recruitment policy of Sindh police vide letter dated 4.5.2018, as discussed in the preceding paragraphs with further assertion that the recruitment process will be reinitiated afresh.

11. Having regard to the facts and circumstances of this case, we are of the view that it is important to discuss the Rule of the 'Doctrine of Proportionality' in ensuring preservation of the rights of the petitioners. The 'Doctrine of Proportionality' is well-recognized to ensure that the action of the Respondents against the petitioners does not impinge their fundamental and statutory rights. The above said important doctrine has to be followed by the Respondents at the time of taking action against the petitioners to satisfy the principles of natural justice and safeguard the rights of the petitioners.

12. On the basis of respective submissions advanced, this Court finds that following issues 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 Hyderabad Range, or to be considered for appointment, in accordance with the rules existing on the date of advertisement?
- (ii) Whether the decision of Government of Sindh in discontinuing the recruitment exercise for the post of Driver police constable initiated in the year 2017-2018 is arbitrary?

13. 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 “Only those candidates will be eligible to apply who are domiciled of the concerned districts. No candidate shall be considered in any other district except in the district of domicile/ PRC. Furthermore, candidate applying for the recruitment must have completed matriculation from any Board of Secondary Education located in Sindh only.”

14. 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.

15. 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:-

“1. 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 additional 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 form 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.”

16. 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.

17. In the absence of any relevant rule, the Government is under no legal duty to fill up all or any of the vacancies. Such right of employer is, however, hedged with the condition that State action is not arbitrary in any manner. The

decision of employer, if is otherwise not arbitrary and has been taken for valid reasons, no interference with the State action is warranted.

18. 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.

19. The question as to whether the respondents had the right to stop the recruitment process. In our view that the mere fact that petitioners were selected for appointment to vacancies, pursuant to an advertisement did not confer any right to be appointed to the post in question or to entitle the selectees to a writ of mandamus or any other writ compelling the authority to make the appointment, for the simple reason that the Government of Sindh constituted a committee to probe the issue, who have opined that the whole process of recruitment of Driver police constables needs to be scrapped, on the premise that the failed candidates in physical measurement (313) in subsequent process of written examination and interview have been shown as successful candidates in the final merit list, which is in violation of recruitment policy 2016 as discussed supra and which has cast clouds over the entire process.

20. We have noted that in the present case the selection was yet to be made by the respondent-department. Therefore, the petitioners cannot even claim that they were selected for appointment by the respondent-police department. The selection process had not been completed and before it could be completed the Government reviewed its earlier decision and decided to revise the same. It is, therefore, clear from the settled legal position that the petitioners have no right to claim that the selection process once started must be completed and the Government cannot refuse to make appointments of candidates duly selected by the respondent-department.

21. We have noted that the competent authority i.e. IGP Sindh after going through the relevant record of recruitment process, had cancelled the recruitment process of Driver Constable (2017-18) in Hyderabad Range being violation of Recruitment Policy of Sindh Police and directed that the recruitment process may be reinitiated after General Elections-2018 vide letter No.6631-33/EB-III/T-7/S&S, dated 03.05.2018. Furthermore, a committee comprising of following officers was also constituted to scrutinize the record / process regarding recruitment of Driver Constalbe (2017-18) in Hyderabad Range.

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| i. | Dr. Aftab Ahmed Pathan,
Addl. IGP Sindh, Karachi | (Chairman) |
| ii. | Mr. Naeem Ahmed Sheikh, PSP | (Member) |
| iii. | Mr. Javed Ali Mahar, PSP
DIGP / Establishment, CPO Sindh Karachi | (Member) |

22. That above committee after a meeting held on 22.5.2018 after going through the Final Merit List of candidates noticed serious irregularities in the recruitment process and found that the candidates who were deficient in chest expansion have been recommended for appointment subject to condonation of chest expansion by competent Authority. Since the eligibility criteria as laid down in Point 4.1.6 (Recruitment Policy) requires 1.5” expansion in chest for Male candidates, thus candidates falling short of said criteria actually failed in physical measurement and were not allowed to appear in further examination of recruitment; that in case of recruitment of driver constables in Hyderabad Range 313 candidates who were deficient in Chest expansion were declared passed in the physical measurement and were also allowed to appear in written test and interview, in violation of Recruitment Policy, the candidates had also been shown as Recommended in the final merit list received for approval. The committee has observed that the inclusion of ineligible and failed candidates in subsequent process of written examination and interview a highly serious and clear-cut violation of Recruitment Policy of Sindh Police. This violation had made the whole process of recruitment defective and thus in view of above, the committee recommended to CANCEL the process held for the post of Driver Constable at Hyderabad Range. The recommendations of the said Committee were approved by the IGP Sindh and the process of recruitment in Hyderabad Range was cancelled and it was conveyed to DIGP Hyderabad Range.

23. In view of the discussions made above, it is obvious that the petitioners do not acquire any right of appointment against the post advertised. Since the Government also has the right to cancel the recruitment process, even prior to its conclusion, for valid reasons, the petitioners cannot compel the Government to complete the recruitment process, once initiated, as per the rules operating on the date of advertisement.

24. The material placed on record before this Court clearly shows that a policy decision was taken by the Government to have the recruitment undertaken for the posts by way of fresh advertisement. Such material would

clearly justify a departure in policy for ascertaining merit of candidates which is neither irrational nor discriminatory or arbitrary. The petitioners otherwise have not acquired any right to be considered for recruitment. Objection, raised in that regard, therefore, fails.

25. 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 along with pending applications.

JUDGE

JUDGE

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