

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 5960 of 2017

Raja Sohaib Manzoor and othersPetitioners

Versus

The Inspector General of Police & others.....Respondents

Date of hearing: 05.12.2018

Mr. Abdul Salam Memon Advocate for the Petitioners.

Mr. Shahriyar Mehar, AAG a/w Ms. Shahmin Imran, Ms.Humaira Jatoi internees of AG office.

Mr. Raza Mian, DSP on behalf of the Inspector General of Police.

ORDER

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition, basically the Petitioners are seeking implementation of the judgment dated 06.11.2016 passed by the learned Sindh Service Tribunal at Karachi (SST), whereby they were reinstated in service as Police Constables in BPS-5 in Sindh Reserved Police Base-II Karachi (SRP).

2. Mr. Abdul Salam Memon, learned counsel for the Petitioners has argued that the Petitioners, after completion of all codal formalities, were appointed as Police Constables in BPS-5 in Sindh Reserved Police Base-II Karachi (SRP); that the Petitioners had undergone Eagle training course at PTC Saeedabad, Karachi successfully; that after continuous devoted and successful performance, the Respondent-Department threatened the Petitioners and several other employees that their appointments were illegal, therefore they have to face termination from the service, finally Respondent-Department served the Petitioners with the Show Cause Notices dated 18.04.2016 i.e. one day prior to

their dismissal order dated 6.5.2016 from service. It is next contended by the learned counsel for the Petitioners that the allegations of illegal appointments, leveled against the Petitioners were not proved through cogent evidence, therefore, their dismissal from service orders dated 6.5.2016 were without lawful justification and were issued in violation of the Rule 5(3) (a)(b) of Sindh Police (Efficiency & Discipline) Rules, 1988 whereby they ought to have provided hearing to the Petitioners, before taking action of Major Penalty of Dismissal of service. He further contended that the Petitioners preferred Departmental Appeals which were rejected without reasons, thereafter the Petitioners approached the learned SST by filing their respective Appeals No.1255/2016 to 1337/2016 and the learned SST vide common Judgment dated 08.11.2016, set-aside the dismissal orders of the Petitioners. He next added that the Petitioners approached the Respondent-Department for compliance of the Judgment passed by the learned SST but they have failed and neglected to comply with the aforesaid Judgment compelling the Petitioners to approach this Court for execution of the order of the learned Sindh Service Tribunal.

3. At this stage, we queried from the learned counsel for the Petitioners as to how the instant petition is maintainable as this Court is not an executing Court in respect of the orders of the learned Sindh Service Tribunal. He in reply to the query submitted that the Judgment of the learned Sindh Service Tribunal is required to be implemented in its letter and spirit and in this regard the Petitioners approached the learned SST but no order could be passed on the application of the Petitioners, however, they referred the judgment dated 26.12.2016 passed by Hon'ble Supreme Court of Pakistan, in Civil Petitions for Leave to Appeal No.634-K of 2016 and other connected petitions, whereby they

again approached the Hon'ble Supreme Court of Pakistan in the aforesaid matters by filing an application to become a party in the proceedings. He next submitted that the Hon'ble Supreme Court of Pakistan at Paragraph No.3 has observed that since no adverse order was passed against the Petitioners, therefore, they would be at liberty to approach the proper forum, if they so desired, for the redressal of their grievances, which forum will decide the grievances of the Petitioners in accordance with law, hence, they have now approached this Court.

4. Learned AAG has intervened in the matter and sought permission to assist this court by referring to the Judgment passed by the Hon'ble Supreme Court of Pakistan in the aforesaid matter and pointed out that the Hon'ble Supreme Court of Pakistan at Paragraph No.5 of the Judgment, as discussed supra, scrapped the entire recruitment process initiated in the years 2012 to 2015 and has directed to initiate afresh recruitment process on the posts of police constables, after public notice in the newspapers; that the case of the Petitioners cannot be entertained by this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 on the premise that once the Honorable Supreme Court has nullified the recruitment process initiated by SRP-II, no claim can be made by the Petitioners, on the aforesaid posts. He submitted that the entire process of recruitment, more particularly with regard to the Petitioners, who were appointed from 2012 to 2015 and were dismissed from the service, was scrapped by the Hon'ble Supreme Court of Pakistan. He further submitted that since the Judgment of the Hon'ble Supreme Court is a subsequent Judgment to the Judgment of the learned Sindh Service Tribunal, therefore, preference has to be given to the Judgment of the Hon'ble Supreme Court and not to the Judgment of the learned

Sindh Service Tribunal, which by operation of law has become infructuous, in view of the findings of the Hon'ble Supreme Court. He lastly prayed for dismissal of the instant petition.

5. We have heard the learned counsel for the parties at some length and have perused the material available on record.

6. Per learned AAG, the policy for recruitment of constables in Sindh Police-2016 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.

7. Upon perusal of the order dated 26.12.2016 passed by the Hon'ble Supreme Court of Pakistan in the aforesaid matters it was 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 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 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.”

8. 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, through National Testing Service. As per record and statement dated 13.10.2017 submitted by AIGP, Establishment, the Petitioners were directed to participate in the proceedings initiated for the appointment of Police Constables. Resultantly, they submitted their application forms and also appeared in physical / written test conducted through NTS but they could not succeed and failed in either obtaining lesser marks or in physical / running. The aforesaid factum prima facie show that the Petitioners participated in the second recruitment process but had failed, therefore no premium can be given to them at this stage. Reverting to the plea taken by the Petitioners that they had already been reinstated in service by the order of the learned SST, therefore they were not required to participate in the fresh recruitment process as directed by the Honorable Supreme Court in the aforesaid matters, as they were not party in the proceedings. We do not agree with the contention of the Petitioners, for the reason that the order dated 26.12.2016 passed by the Hon'ble Supreme Court of Pakistan, which is quite clear in its terms, since the entire recruitment process initiated in the year 2012 to 2015 was declared illegal, consequently direction was issued to the respondents to initiate the same afresh. As per the record the Respondents complied with the directions of the Honorable Supreme Court by inviting applications through public notice and completed the process accordingly.

9. In the light of the findings of the Honorable Supreme Court in the aforesaid matter, in our view the Petitioners have failed to point out any malice on the part of respondents, as the Hon'ble Supreme Court of Pakistan had already taken cognizance of the matter and has scrapped the entire recruitment process in which the Petitioners had participated, therefore, at this juncture no lease

could be given to the Petitioners on the assertion that the learned SST reinstated their services. In our view, the judgment of the Honorable Supreme Court on the subject has to be followed in its letter and spirit. Perusal of the record shows that at the time of the initial appointment of the Petitioners, they have failed in the test and interview. As per letter dated 03.01.2017 issued by the AIGP/ Establishment, which explicitly show disqualification of the Petitioners to be appointed as Constables in Sindh Reserved Police (SRP).

10. In view of such state of affairs, the captioned petition fails; therefore, the same is dismissed along with listed application.

11. These are the reasons of our short order dated 05.12.2018, whereby we have dismissed the instant petition.

Karachi:
Dated: 07.12.2018.

JUDGE

JUDGE

Nadir/PA.