

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –3913 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Abdul Ghafar

Versus

Province of Sindh and another

Date of hearing & order : 14.12.2020

Jam Shahid Iqbal Lar, advocate for the petitioner along with petitioner Abdul Ghaffar.

Mr. Ali Safdar Depar, Assistant AG along with Muhammad Habibullah Khan, AIGP (Legal-II) and Raza Mian, DSP (Legal).

ORDER

ADNAN-UL-KARIM MEMON, J. Through the captioned constitutional petition, the petitioner is asking for setting aside the recommendation/rejection order dated 2.6.2020 passed by Sindh Police Recruitment Board ('**SPRB**'). He is also seeking direction to the respondent-Police Department to regularize his service under Section 3 of The Sindh (Regularization of Adhoc and Contract Employees) Act, 2013. He prays for his reinstatement in service with back benefits.

2. The case of the petitioner is that he was appointed as Police Constable in the Sindh police department in the year 2016 on contract basis for two (02) years and on the expiration of the contract he was relieved from service. The appeal filed by him against his relieving order was allowed by Inspector General of Police Sindh and accordingly he was allowed to resume his service. Meanwhile, the SPRB was constituted to consider and finalize the cases of regularization of all such contract police constables. The SPRB vide impugned recommendation dated 02.06.2020 (page 23), rejected him on the ground that he was ex-Army personnel.

3. Jam Shahid Iqbal Lar, learned counsel for the petitioner, urged that the ground on which the petitioner has been rejected is discriminatory as there is no bar for the appointment and/or regularization if the incumbent is ex-army personnel.

4. At the outset, we asked learned counsel for the petitioner to satisfy this Court about the maintainability of the instant petition on the premise that police constable can only be recruited on regular basis under the Recruitment Rules-2016 and not on contract basis. He replied that police constables were recruited through a competitive process in the year 2016 on contract basis and subsequently the services of 1,552 police constables were regularized vide office order dated 12.06.2018. He further pointed out that the Special Protection Unit (SPU) was created to provide security to China Pakistan Economic Corridor (CPEC) Projects and Chinese Nationals working on CPEC projects. He emphasized that due to the above situation, it was decided by the competent authority vide summary dated 29.01.2016 that recruitment of Ex-Army personnel (Combatants) be made in Sindh Police as Police Constable (BS-05) on 02 years' contract basis. Per learned counsel the recommendation of SPRB is illegal, void ab-initio and not sustainable under the law. He averred that the decision of SPRB was / is erroneous on the premise that the competent authority was DIGP Rapid Response Force Sindh and not SPRB thus the findings against the petitioner are irrelevant. Learned counsel submitted that respondent-police department have already regularized the services of police constables vide office order dated 12.06.2018 and the petitioner seeks similar treatment as meted out with them. He prays for allowing the instant petition.

5. Mr. Ali Safdar Debar, learned AAG, has referred to his parawise comments and compliance report in pursuance of order dated 26.11.2020 passed by this Court and argued that the competent authority approved the summary regarding recruitment of ex-personnel of armed forces of Pakistan in Special Protection Unit in BS-05. He further pointed out that the committee was constituted to draft recruitment rules regarding recruitment of ex-army personnel as police constable BS-05 in Sindh Police on contract basis for two years, such rules were framed, however, the selection criteria was modified vide minutes of meeting of committee dated 16.05.2016 by relaxing the qualification i.e. age, height and educational qualification of the police constables vide letter dated 22.07.2016. He further argued that the competent authority vide summary dated 04.10.2016 directed to regularize the ex-army personnel as police constable till the attained of age of superannuation instead of recruitment on contract basis vide letter dated 12.06.2018. He next argued that the purpose of filing this petition is achieved as the competent authority considered the case of the petitioner and regularized his service vide letter

dated 30.11.2020. He prayed for disposal of the instant petition in terms of office order dated 11.12.2020 attached with the compliance report.

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

7. In our view, only those candidates can be appointed against the post of the police constable in Sindh Police, who meet the required criteria as provided in the Recruitment Rules-2016. In this regard, our view is supported by Rules 12.6 and 12.15 of Police Rules, 1934.

8. The primordial questions raised in the present proceedings are as under:-

- i) Whether the petitioner possesses the required qualifications for the post of police Constable (BS-05) in Sindh Police as per recruitment Rules-2016 ? And
- ii) Whether police Constable (BS-05) in Sindh Police can be recruited on a contract basis and subsequently be regularized in service under the law?

9. To address the first proposition, we have to look at the matter in its entirety. A 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 a contract basis vide advertisement published in the newspaper. The logic behind the appointment of ex-army personnel as police constable was to protect Chinese nationals present in Sindh in connection with China Pakistan Economic Corridor (CPEC).

10. We have noticed that 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 Petitions 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.”(Emphasis added)

11. 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.

12. 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 re-examination 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. EB-III/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.”

13. We have also perused the decision dated 29.07.2016 taken by the Recruitment Committee in the following manner:-

“A meeting regarding policy for recruitment of Constables in Sindh is held on 29.07.2016 to review the Recruitment Policy already issued vide No. 9201-89/EB-III/I-7/S&S dated 25.05.2016. Following decisions were taken during the meeting.

- i. Para 4.1.4 of the Recruitment Policy should be amended as follows:-
“4.1.4 of Constitution of Recruitment Committee:
 - a) The Chairman of the Committee shall be an officer not below than the rank of DIGP to be nominated by the IGP.
 - b) The Committee shall comprise of two officers of the rank of SSP or SP, to be nominated by the IGP.
 - c) Representative of Pakistan Army to be nominated by 5 Corps (to the extent of Physical Test only).
 - d) Representative of CPLC, to be nominated by Chief of CPLC (for Karachi Range only).”
- ii. In para-4.1.6 of the Recruitment Policy, the required age for Constables (BS-05) in any of the executive establishments of Sindh Police may be read as 18-28 years instead of 18-25 years.

Sd/-
(ALLAH DINO KHOWAJA)
PPM & BAR, PSP
INSPECTOR GENERAL OF POLICE
SINDH KARACHI.

Sd/-
(SANAULLAH ABBASSI) PSP
ADDL: INSPECTOR GENERAL OF POLICE
CTD SINDH, KARACHI

Sd/-
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KARACHI RANGE

Sd/-
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TRAFFICE SINDH KARACHI

14. From a bare perusal of the decision of the Hon'ble Supreme Court as discussed supra and the Recruitment Policy as well as provisions of Sindh Civil Servants Act and Rules framed thereunder, it is abundantly clear that the Recruitment Committee has restricted the candidates on their own accord that the candidates must have completed matriculation from any Board of Secondary Education located in Sindh only to be eligible for the aforesaid post of Constable. The Respondent-Police Department has only made an amendment in para 4.1.6 of the Recruitment Policy to the extent of the age of candidates from 18-25 years.

15. In view of the foregoing legal position, we are of the considered view that the Government having the domain to frame the policy of appointment and also provide the qualification for appointment against a particular post and thus, appointment against such post through initial appointment or otherwise cannot be claimed without fulfillment of the criteria and the requisite qualifications as provided under the Recruitment Rules as discussed supra. Undoubtedly, it is the Government, which has to perform its function strictly in accordance with law but, prima facie, it is noticed that re-employment of ex-army personal in the police department on a contract basis and their subsequent regularization in the police force is not in conformity with the law and the judgment passed by the Honorable Supreme Court in Suo Motu Case No.24 of 2010 (PLD 2011 SC 277), and in another Suo-Motu Case No.16/2011 (PLD 2013 S.C 443) as well as various judgments / orders passed by this Court. Therefore, the learned Assistant Advocate General has been asked to seek instructions in this behalf from the concerned quarters, however, he insists that ex-army personnel may be allowed to be retained till the age of their superannuation i.e. 60 years.

16. The aforesaid legal position of the case explicitly shows that there is no concept of appointment of police constables in Sindh Police on contract basis under the recruitment rules as discussed supra. Since petitioner has applied against the post of a police constable in the police department on contract basis, he is not entitled to such relief under the aforesaid provision.

17. In the light of the above discussion, it is crystal clear that Police Department cannot circumvent the law to make recruitment to the post of a police constable on contract basis by issuing summary / Standing Orders or by invoking powers under the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974. The appointment of a police constable can only be made through a competitive process on a regular basis as provided under the

recruitment rules and not otherwise. In view of the foregoing legal position, we are of the considered view that the appointment of police constables on contract and their subsequent regularization is not supported by any law.

18. Learned AAG has failed to justify the impugned action of the official respondents. However, he as well as the AIGP and DSP present in Court have prayed that the ex-army personnel appointed on contract as police constables specifically for the CPEC project and were subsequently regularized, may not be removed or dislodged from the said post. According to them, their sudden removal will have a serious impact on the CPEC project, which is of national importance as the Chinese Nationals, who are working in Sindh on the said project, may feel insecure. On behalf of the respondents, they undertake that in future no such appointment in the police department / force shall be made on contract basis.

19. We are conscious of the importance of the CPEC project and the priority to be given to the foreign / Chinese nationals involved in the said project within Pakistan. Thus, the above submission by learned AAG and senior police officials cannot be ignored. However, this does not mean that the law should be ignored or is allowed to be violated. In this view of the matter, we deem it appropriate to pass the following order :

20. The appointment order dated 12.06.2018 filed by IGP Sindh as annexure 'M' to his compliance report / comments dated 14.12.2020 regarding appointment of contractual employees / ex-army personnel as police constables on regular basis, is hereby set aside. The competent authority / Inspector General of Police Sindh is directed to thoroughly scrutinize the candidature of the petitioner and all other police constables / ex-army personnel in BS-05, and if they are found eligible and fit to be admitted as police constable in Sindh Police, they should be retained on contract basis only for the CPEC project. The competent authority / Inspector General of Police Sindh is further directed to complete this exercise within two (02) months from the date of receipt of this judgment and to submit compliance report to this Court through MIT-II. Issue notice to the Chief Secretary Sindh and the Inspector General of Police Sindh for compliance.

21. In view of the special facts and circumstances discussed above, it is made clear that this order shall not be treated as precedent for allowing any

appointment of a police constable in Sindh Police, whether ex-army personnel or otherwise, on contract basis and/or his subsequent regularization.

The instant petition stands disposed of in terms of the above direction and observation with no order as to costs.

JUDGE

JUDGE

Nadir*