

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-271 of 2019

Imtiaz Hussain Versus Province of Sindh & 03 others

Date of Hearing: 03.09.2019

Date of Judgment: 03.09.2019

Mr. Raham Ali Rind, Advocate for the Petitioner.

Mr. Shahriyar Mahar, Assistant Advocate General Sindh a/w Mr. Raza Mian, DSP (Legal), Mr. Ghulam Qadir on behalf of DIGP, East & Inspector Muhammad Anwar on behalf of SSP East, Karachi.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:-, Petitioner is seeking declaration to the effect that he is eligible and fit candidate for appointment as Police Constable in Police Department, on the basis of Son quota.

2. The facts of the case of Petitioner are that the father of the Petitioner was working in Sindh Police Department as Head Constable and during service he became paralyzed and retired on 16.5.2016. Petitioner added that he applied for the post of Police Constable in the Police Department on Son quota but the Respondent No.2 without any justified reason kept the matter in abeyance. Petitioner has averred that another similar petition bearing C.P No.D-4045 of 2012 was disposed of by this court, and he seeks similar treatment. Petitioner also claims that he approached the Respondents by moving various applications for the post of Police Constable on son quota but nothing could be done. Petitioner, being aggrieved by and dissatisfied

with the inaction on the part of respondents has approached this Court on 15.1.2019.

3. Upon notice, the Respondents No. 2, 3 and 4 have filed their para-wise comments.

4. Mr. Raham Ali Rind, learned Counsel for the Petitioner has argued that the Respondents are discriminating the Petitioner in violation of Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974, Standing Orders issued by Inspector General of Police, Sindh (IGP) and Police Rules. Learned counsel further added that Petitioner is entitled to be appointed to the post of police constable on the basis of Son quota as well as on merits; that the Petitioner has been seriously prejudiced and not treated equally, therefore, the Petitioner is entitled to be treated equally in accordance with law, as provided under Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973; that grave injustice has been done with the Petitioner with no fault on his part by depriving him for his appointment to the post of police constable, for which he is fit and qualified; that due to such acts and deeds of the Respondents, the Petitioner has suffered a lot of mental torture, agonies and by such situation, the Petitioner is facing problems too; that the denial in this regard by the Respondents amounts to invade upon and infringement of fundamental and legal rights of the Petitioner, as guaranteed under the Constitution of Islamic Republic of Pakistan 1973 that are enforceable by this Court in exercise of its Constitutional jurisdiction; that the Petitioner has been continuously approaching personally all the movers and shakers to appoint him for the post of police constable on the basis of Son Quota; that the

Petitioner is aggrieved by the illegal action of the Respondents. He lastly prays for allowing the instant Petition.

5. Mr. Shahriyar Mahar, learned A.A.G Sindh, representing the Respondents, has contended that the Petitioner is not entitled to be appointed as police constable in Police Department on the basis of Son quota on the basis of Standing Orders issued from time to time by Inspector General of Police, Sindh as the same had not been approved by the Provincial Government. He further added that the Honorable Supreme Court has nullified all the Standing Orders issued by the Inspector General of Police, Sindh, which are not approved by the Provincial Government; therefore, no right has accrued in favour of the Petitioner for the post of police constable. He lastly prayed for dismissal of the instant Petition.

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

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 Petitioner does not relate to the terms and conditions of service, but he has 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. In our view, important question of law is involved in the subject Petitions which is as follows:

i) Whether Petitioner 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?

9. Petitioner claims to be entitled against the Son quota in Police Department. We inquired from the learned counsel for the petitioner

that whether there is any provision for Son quota in Police Department?
He failed to reply.

10. Let us shed light on the policy for recruitment of 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. 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. In our view only those candidates can be appointed against the post of police constable, who meets the requisite 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.

11. We are of the view that respondents have rightly rejected candidature of the Petitioner. Besides, Petitioner has failed to establish case of discrimination and/or violation of any Law.

12. Adverting to the main contention of the petitioner that under standing orders police department is empowered to appoint the petitioner against the son quota. In order to clarify the legal position that has emerged in the present case we first take up legal issue of appointment in Sindh Police through Standing Order No. 279/2014 issued by the Inspector General of Police, Sindh.

13. It has been agitated by the learned counsel for the Petitioner that under the Standing Orders issued by the Inspector General of Police appointment on the post of police constable on Son Quota can be made.

14. To rebut the said contention, learned AAG has stated that all the Standing Orders issued by the Inspector General of Police without

approval of Provincial Government have been declared nullity by the Hon'ble Supreme Court of Pakistan in the case of Gul Hassan Jatoi & others Vs. Faqeer Muhammad Jatoi & others (2016 SCMR 1254). Therefore, no sanctity can be attached to such Standing Orders.

15. As per AAG, the Office of Inspector General of Police, Sindh, Karachi vide order dated 09.06.2014 issued Standing Order No.279/2014 notifying the recruitment in Sindh Police against Shaheed Quota/Son Quota (children of deceased, invalidated on medical grounds, retired and in-service police officers/men). Apparently, the said Standing Order has not been approved by the Provincial Government as required under Section 12 of Police Act, 1861. The relevant portion of Section 12 of Police Act, 1861 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.”

16. Section 12 of the Police Act, 1861 reproduced supra leaves no room or ambiguity as to the fact that police force is commanded by Inspector General of Police, who has 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 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 approval of the Provincial Government.

17. We are fortified by the judgment rendered in the case of Gul Hassan Jatoi (supra) and Mohammad Nadeem Arif & others vs. IGP Punjab, Lahore & others (2011 SCMR 408) in which Hon'ble Supreme Court has held that the Standing Orders issued by Inspector General of Police have to be approved by the Provincial Government.

18. Reverting to the moot point raised by the learned Counsel for the Petitioner that candidature of the Petitioner was assessed by the respondents for the post of Constable against Son Quota. It is an admitted position that Standing Orders have not been approved by the Provincial Government. Therefore, no sanctity can be attached with such Standing Orders to claim benefit.

19. Learned counsel for the Petitioner while laying emphasis on Rule-10-A & 11-A of Sindh Civil Servant (Appointment, Promotion and Transfer Rules, 1974) argued that Petitioner is entitled for the post of police constable on son quota. However, after thorough examination we have noted that Rule 10-A and Rule 11-A until 30th July, 2011, published on 01.09.2011 were as follows:-

“10-A. Notwithstanding anything contained in these rules, where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his unemployed children or, as the case may be widow (when all the children of the deceased employee are minor) may be employed against a post meant for initial appointment in BPS-16 and 17 for which he/she possess the minimum qualifications prescribed to that post:

Provided that such child or widow may be given ten additional marks in the aggregate by the Sindh Public Service Commission or the appropriate Selection Board or Committee, if he or she otherwise qualifies the test, examination or interview;

Provided further that a person who may have applied under this rule and qualifies purely on merit shall not be awarded any additional marks and his selection shall be made on merit and not under this rule.

Provided further that the cut of date shall be within two years of the death of the officer or official.

11-A. Where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his/her children or, as the case may be, widow (when all the children of the deceased employee are minor) shall be provided job who applies within a period of two years of death or declaration of invalidity of incapacity of civil servant on any of the basic pay scales No.1 to 15 in the Department where such civil servant was working;

Provided that such appointment shall be made after fulfillment of formalities as required in the requirement rules and holding interview, for the post applied for; provided further that the cut of date shall be within two years of the death of the officer or official”

Third proviso of Rule 10-A as well as second proviso of Rule 11-A, specifically provides cutoff date for making of application for appointment under the deceased employees quota within 2 years of the occurrence of death of the Government Official. Through a further Notification dated 16.09.2014, two further provisos were added in Rule 10-A and 11-A and they are as follows:-

“1. Under Rule 10-A after third proviso, the following fourth proviso shall be added:-

“Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be deprived of the benefit accrued to him under Notification dated 11.03.2008 and 17.07.2009 of these rules.”

2. Under Rule 11-A, after second proviso, the following third proviso shall be added:-

“Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be

deprived of the benefit accrued to him under Notifications dated 11.03.2008 and 17.07.2009 of these rules”

20. We are not impressed by the contention of learned counsel for the Petitioner on the aforesaid proposition for the reason that aforesaid legal position explicitly show that there is concept of deceased quota subject to all just exception and not son quota, since petitioner has applied against the son quota in police department which under the aforesaid provision cannot be done so. However the Honorable Supreme Court in C. P. No. 482-503-K of 2016 vide order dated 10.08.2016 has held that the above two provisos added by Notification dated 16.09.2014 omit the application of Notifications dated 11.03.2008 and 17.07.2009 to those candidates under the above quota whose right of employment has already occurred. In Notification dated 17.07.2009, the cutoff date for making application for employment under the above quota was provided as 17.07.2009. It is clear from Notification dated 16.09.2014 that the clog of two years for making application for employment under the deceased quota for the children who have already applied for employment prior to making of this rule, was done away.

21. We have come across Sindh Shaheed Recognition and Compensation Act, 2014 (Sindh Act No. XVI of 2014) published in Sindh Government Gazette on 11.06.2014. The case of Petitioner does not fall within the ambit of definition clause (f) of Section 2 and section 3 (5) of said Act. For ready reference sub section (5) of Section 3 and Section 2 (f) are reproduced as under:-

“Government shall, in addition to the financial compensation under sub-section (4), appoint at least two members of the family

being the legal heirs of Shaheed person into service of Government in relaxation of the conditions of qualifications and age, to the extent as Government may deem appropriate.”

Section 2 (f) of Sindh Shaheed Recognition and Compensation Act, 2014, provides definition of Shaheed which reads as under:-

“Shaheed” means a person who offered sacrifice of his life in line of duty in counter terrorism or becomes victim of an act of terrorism operation or targeted and killed by terrorists group and declared Shaheed in the manner prescribed by Government.”

22. We may observe that Sindh Civil Servants Act, 1973 is an act of general application while Police Act, 1861 is of special application to the officers of subordinate rank of Police Force. The same goes with the rules. Therefore, Petitioner cannot take resort of either Standing Orders or Sindh Civil Servants Act, 1973 and Rules framed there under to claim appointment to the post of police constable. Reliance is safely placed upon the case of Inspector General of Police, Punjab, Lahore another vs. Mushtaque Ahmed Waraich and others (PLD 1985 SC 159).

23. In the light of above discussion, it is crystal clear that Police Department cannot circumvent the law to make recruitment to the post of police constable on the basis of Son/Shahid quota by issuing Standing Orders or by invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and Sindh Shaheed Recognition and Compensation Act, 2014. The appointment of police constable can only be made through competitive process on merit as provided under the recruitment rules and not otherwise.

24. In view of what has been discussed above, the instant Constitutional Petition is dismissed along with pending application(s).

25. These are the reasons of our short order dated 3.9.2019, whereby we have dismissed the instant petition. Let a copy of this order be transmitted to the IGP, Sindh office for information and compliance.

JUDGE

JUDGE

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