

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-673 of 2016

Ahmed Ali Saharan
 Versus
 Province of Sindh & others

A N D

C.P. No. D-674 of 2016

Raza Muhammad Panhwar
 Versus
 Province of Sindh & others

Date of Hearing: 05.09.2019

Petitioner in CP No.D-673 of 2016: Through Mr. Abdul Salam Memon a/w Ms. Rabya Javed Advocates.

Petitioner in CP No.D-674 of 2016: Through Mr. Sajjad Ahmed holding brief for Mr. Ali Asadullah Bullo Advocate.

Respondents: Through Mr. Shaharyar Mehar, Assistant Advocate General.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- These two petitions are filed to claim relief on the basis of Standing Order No.279/2014 of I.G. Police Sindh and hence are being disposed of through this common order as being based on same facts and law.

2. Petitioners in the present proceedings claim their appointments through Standing Order No.279/2014. Father of petitioner in earlier petitioner retired on 17.08.2015 as an Assistant Sub-Inspector while in the later petitioner's father is a serving employee in police department. It is claimed that the Inspector General of Police Sindh issued a Standing Order No.279/2014 for the recruitment against Shaheed Quota and son Quota (Children of the deceased, invalidated on medical grounds,

retired and in service police officers/men. It is claimed that by virtue of Section 12 of Police Act, 1861 and in supersession of all Standing Orders issued on the subject matter, the Inspector General of Police was pleased to notify the aforesaid standing order, which was ordered to remain in force for next five years or until further orders.

3. Since the father of one of the petitioners retired on 17.08.2015 while the other in service of the police department, it is claimed that the petitioners under the law are entitled to take benefit arising out of aforesaid Standing Order. Consequently they applied for their appointment as Junior Clerks on son quota basis which requests were declined hence this petition was preferred.

4. Notices of the petitions were issued and respondents No.3 and 4 i.e. Inspector General of Police Sindh and Deputy Inspector General (Establishment) Police Department, filed their comments wherein they have disclosed that petitioners' applications were declined on the ground that all standing orders stood withdrawn in the light of the judgment of Hon'ble Supreme Court reported in 2010 PLC 924, as the same were issued without approval of provincial government including the subject Standing Order i.e. 279/2014, which pertains to serving/retired employees quota. They have further stated in their arguments that the Hon'ble Supreme Court in the recent pronouncement of Gul Hassan Jatui v. Faqir Muhammad Jatui reported in 2016 SCMR 1254, standing orders issued from time to time by different Inspectors General of Police, Provincial Police Officers, without approval of provincial government are declared to be illegal and void to the extent of prescribing recruitment rules, terms and conditions of service of the officers/men in Sindh Reserve Police including devising of transfer policy and pertaining to assignment of seniority in violation of rules.

5. With the above back ground, we have heard the learned counsel for petitioner in CP No.D-673 of 2016 and learned Assistant Advocate General while counsel appearing for petitioner in CP No.D-674 of 2016 has adopted the arguments, and have also perused the material available on record.

6. In substance the crux of the arguments of learned counsel for the petitioner was that all those standing orders are deemed to have been issued with the approval of the provincial government. On this strength the subject standing order No.279/2014 is claimed that since a copy of the said Standing Order was sent to Home Department, it may be deemed to have been approved as they kept quiet and thus it is implied consent.

7. All standing orders issued from time to time by the Inspector General of Police were declared null and void unless issued with the approval of the provincial government. An attempt was made to satisfy this Bench that since subject notification/standing order was sent to the Secretary Home Department, Government of Sindh, therefore, it passed the test prescribed by the aforesaid judgment of Hon'ble Supreme Court.

8. We are not satisfied with the submissions of the counsel. Sending copy of the standing order to the provincial government and/or concerned ministry/Home Department could hardly be said to have approved the scheme encompassed in the standing order. Approval of the provincial government and/or concerned ministry is inevitable in literal sense that there should be meaningful discussion and debate and the spirit behind the recommendation, to be made by provincial government and that too in clear terms and only then such standing orders could withstand the rigorous of the requirements, as mentioned in the judgment of Hon'ble Supreme Court, referred above. This

argument could hardly be sustainable under the law that since a copy of standing order was sent to the Home Department, therefore, it stands approved since no action by the government, after receipt of the copy has been taken. This is only futile attempt to legitimize the actions of the Inspector General of Police while issuing various standing orders without prior approval of provincial government and/or concerned ministry. Learned counsel for petitioner could not substantiate his argument that silence and/or inaction on the part of the government can be termed as approval.

9. We have also perused Section 12 of Police Act, 1861 which is claimed to empower the Inspector General to make rules regarding recruitment. We do not see any element to the extent of “recruitment” that could empower an Inspector General to frame rules. Section 12 of the *ibid* Act empowers Inspector General, of course with the approval of the provincial government, to frame orders and rules, as shall be deemed expedient relating to organization, classification and distribution of police force, the places at which the members of the force shall reside and the particular services to be performed by them. Their inspection, the description of arms accoutrements and other necessities to be furnished to them, the collecting and communicating by them of intelligence information and all such other orders and rules relating to the police force as Inspector General from time to time deem expedient for preventing abuse or neglect of duty and for rendering such force efficient in discharge of duties.

10. From the above, we do not see any element that the Inspector General could empower himself under the garb of Section 12 of the *ibid* Act to make recruitment in a particular head and/or of any description. Such is the prerogative of provincial government to frame policies, which could be implemented by the Inspector General. The other

subjects were made part of Section 12 however for such other subjects prior approval of rules was/is inevitable. This was perhaps the wisdom behind a prior approval of the provincial government or concerned ministry that they should first formulate a policy to be towed by the Inspector General.

11. We have also noted that the appointments under the law is only available under Shaheed quota for which legislation has already been done and/or policy has been framed however petitioners' case is not covered under said enactment/policy as they claim their appointments on the basis of retired/serving employees quota which standing orders have already been declared to be unlawful. It is for the provincial government and concerned ministry to frame policy for particular class of recruitment etc. and not for Inspector General of Police Sindh alone.

12. In view of the above, no case for indulgence is made out and the petitions are dismissed with no orders as to costs.

Dated:

Judge

Judge