

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Constitutional Petition No. D – 427 of 2021

Ghulam Farooq Tunio

Versus

Province of Sindh and another

Date of hearing & Order : 15.04.2021

Mr. Jam Shahid Iqbal, advocate for the petitioner.

Mr. Ali Safdar Depar, Asst. Advocate General a/w DPS Legal Raza Mian

ORDER

Adnan-ul-Karim Memon, J. Through the captioned constitutional petition, the petitioner is asking for setting aside the recommendation/rejection order dated 06.06.2018 passed by Sindh Police Recruitment Board ('**SPRB**') and 14.05.2019 passed by Inspector General of Police Sindh, whereby his appeal was rejected. 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 a contract basis for two (02) years and on the expiration of the contract he was relieved from service on medical grounds. The appeal filed by him against his relieving order was also rejected by Inspector General of Police Sindh on the same analogy.

3. Due to the above legal position, we asked learned counsel for the petitioner to satisfy this Court about the maintainability of the instant petition on the premise that police constables can only be recruited on regular basis under the Recruitment Rules-2016 and not on a contract basis.

4. Jam Shahid Iqbal Lar, learned counsel for the petitioner, urged that the grounds on which the petitioner has been rejected is discriminatory and erroneous on the premise that he is a medically fit person to continue with the job, being ex-army personnel. Per learned counsel, his contract was completed

and he has been relieved of the post of a police constable on the allegations that he is suffering from psychiatric issues and remained under treatment. The petitioner being aggrieved by and dissatisfied with the aforesaid order preferred to appeal to the competent authority which was rejected vide order dated 14.05.2019. Learned counsel referred to the medical examination and fitness test conducted by the Medical Superintendent/Civil Surgeon Civil Hospital, Kamber vide letters dated 02.12.2019 and 15.12.20219 and argued that he could not be nonsuited on the aforesaid allegations.

5. On the contrary, learned AAG has referred the medical report of the petitioner which explicitly provides that he is suffering from aforesaid disease and was under treatment, as such he is not entitled to continue his service being psycho patient. The aforesaid allegations have been refuted by the learned counsel for the petitioner on the analogy that he has been declared medically fit by the Health Department Government of Sindh, as such he cannot be said to be suffering from such disease.

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 meets 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 the police constable was to protect Chinese nationals present in Sindh in connection with China Pakistan Economic Corridor (CPEC).

10. 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.

11. The aforesaid legal position of the case explicitly shows that there is no concept of appointment of police constables in Sindh Police on a contract basis under the recruitment rules as discussed supra. We are of the considered view that the appointment of police constables on contract and their subsequent regularization is not supported by any law.

12. In our view, no candidate shall be appointed to a post unless after such medical examination as Government may prescribe such candidate is found medically fit to discharge the duties of the post. In the present case, the petitioner was relieved from the duties on medical grounds and his appeal was rejected on the same analogy. Besides above, the assertion of the petitioner is misconceived on the premise that he obtained a medical examination fitness test certificate on 02.12.2019 after the rejection of his appeal, on 14.5.2019, thus this document could not be taken into consideration, besides the respondents have relied upon the documents which prima facie show adverse inference against him. Thus, at this stage, we cannot declare him medically fit or otherwise for the subject post, which was a contractual position and by efflux of time expired. As such, we cannot order for his reinstatement in service.

13. In view of the above, this petition is misconceived and is hereby dismissed along with the pending application(s) with no order as to costs.

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