

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-2363 of 2021

Imtiaz Ali Isani

Petitioner: In person.

Respondents: Through Ali Safdar Debar, AAG a/w Ali Asghar,
Focal Person, Home Department, and DSP Raza
Mian

Date of hearing
& Decision: 31.01.2023.

ORDER

This petition is primarily filed for consideration of the promotion of the petitioner to the rank of Police Inspector in BPS-16, with retrospective effect when his colleagues were promoted as Police Inspector in the year 2016. Petitioner, who is present in person has referred the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of *Gul Hassan Jatoi v. Faqeer Muhammad Jatoi* (2016 SCMR 1254) and submitted that he was appointed as Assistant Sub Inspector (ASI) in BPS-09 in Criminalistics Division of Sindh Police, now renamed as Forensic Science Division, in the year 1993 under the Deputy Inspector General Technical and Training. Per the petitioner, he was promoted to the post of Sub-Inspector in the year 1999, later on, confirmed on the said post in the year 2001. He asserted that his colleagues were promoted to the rank of Police Inspector under Police Rule 13.14, however, he was ignored. He referred to the West Pakistan Non-Gazetted Technical Staff of Finger Print Bureau Service Rules 1969 as well as Police Rules 13.14 and submitted that he is entitled to be considered for promotion to the next rank along with his batch mates, who were appointed with him in the year 1993 and prompted in December 2016. It is contended that after the lapse of many years, the respondent-Police Department is not considering his case for promotion to the next rank and playing with delaying tactics. It is further contended that due to the lethargic attitude of the respondent-police department, by not considering his case for promotion, he has suffered a lot, which act negates the judgment rendered by the Hon'ble Supreme Court in the case of *Gul Hassan Jatoi*, supra which explicitly provides preparation of seniority list of Inspectors from the date of their

admission in list-F. As per the petitioner, the act of the respondents violates Police Rule 13.15(4) of Police Rules, 1934. Petitioner emphasized that he is entitled to his promotion to the next rank with his colleagues. Petitioner relied upon various documents attached with the memo of the petition as well as the law laid down by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch v. Province of Sindh and others (2015 SCMR 456). He asserts that the respondent-Police Department is required to implement the ratio of the judgment of the Hon'ble Supreme Court in the case of Gul Hassan Jatoi supra in its letter and spirit. According to the petitioner, the respondents have created a new women cadre, in complete negation of the Civil Servants Act, 1973, and Police Rules 1934. He further submitted that the petitioner is working as Sub Inspector / Handwriting Expert for the last 22 years in the Forensic Division of the Sindh Police Department, thus in the alternative, the respondents are required to notify the service structure of the Forensic Division of Sindh Police.

2. Learned AAG has opposed the petition on the ground that this petition is related to service matters and as per Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, the Service Tribunal having established dealing such cases and jurisdiction of this court is ousted. He further submitted that no promotion avenue is available in the Forensic Science Division cadre of the police department thus this petition is liable to be dismissed. He further submitted that at present there is no vacancy in the rank of Inspector available in the Forensic division Sindh and in this regard the competent authority has been approached for enhancement of vacancies in the rank of Inspector in Forensic Division Sindh, Karachi, and no decision has yet been taken, however, he assured that after availability of vacancies from Home Department, Government of Sindh, promotion process of the Sub Inspectors of Forensic Division to the rank of Inspector will be started accordingly.

3. We have heard the petitioner who is present in person and learned AAG and perused the record with their assistance.

4. It appears from the record that the Criminal Listed division of Sindh Police, was established under the Provincial Police hierarchy and was renamed as Forensic Division in the year 2009. As per the petitioner, this technical wing is functioning as a separate unit for recruitment, service training, and promotion upto the rank of Deputy Superintendent of Police

(DSP) as per Police Rule 1.3, however, there do not exist detailed instructions guidelines for working of Forensic Division as a separate cadre.

5. The Hon'ble Supreme Court in the case of *Gul Hassan Jatoi*, supra has settled the question which is the subject matter of this petition by making a hectic effort and after scanning the Police Rules, 1934, and the structure of the Sindh Police was categorized in different establishments i.e. (i) Training Schools (including Provincial Finger Print Bureau) (ii) Special Branch (iii) Crimes Branch (iv) District Police (v) Reserve Police Establishment (inserted through Government notification dated 22.09.1998, by amending the Rules).

6. The Hon'ble Supreme Court further held that all police officers appointed or enrolled in Pakistan general police district constitute one police force and are liable to, and legally empowered for, police duty anywhere within the province. No sub-division of the force territorially or by classes, such as mounted and foot police, affects this principle. The appointments and enrollments of the Police Personnel are regulated by Rule 12 of the Police Rules, 1934 of Chapter XII, which deals with three different sets of recruitment processes described thereunder. Based on the aforementioned criteria of recruitment and training in terms of the Rules referred to hereinabove, it can be easily concluded that the Sindh Police force has three independent units i.e. Executive, Technical District, and Prosecution (Legal). On scanning of the rules, it can be further concluded that the Police personnel appointed in terms of the aforesaid recruitment process cannot horizontally travel to any other unit referred to hereinabove either by way of transfer or otherwise. The only exception provided is that there are employees in the Police Department, which are non-uniformed like ministerial staff and/or I.T. Department but they are recruited and regulated by the Sindh Civil Servants Act, 1973 and the Rules framed thereunder. So far as cadre is concerned it is neither defined in the Police Act nor by the rules framed thereunder. Though the term 'Cadre', has been used in Police Rule 12.6(3)(e). Even in the Sindh Civil Servants Act, 1973, or the rules framed thereunder, the cadre has not been defined. However, the term 'Cadre' has been defined in Rule 9(4) of the Fundamental Rules, 1992. The said Rule defines "Cadre" means the strength of a service or a part of a service sanctioned as a separate unit." the concept of 'Cadre' within the Police service could only be introduced if it is established that the recruitment process, of the training and practical training of the members of Police Force, is distinct.

7. Primarily under the Police Rules, the entry point of all the Police personnel in Executive Police is common. They have a common recruitment process, police training, and practical training as prescribed under the Rules and once these training after their appointments completed, they are transferred to the different establishments under the Rules. The posting and transfer to an establishment of a member of the Police Force is permissible under Police Rule 1.5 and would not change the Cadre of police personnel. Rule 1.5 allows the police personnel to progress vertically by the rules prescribed and could be transferred to any of the establishments. There is no restriction placed on a police officer for transfer from one establishment to other.

8. Moreover, section 12 of the Police Act, of 1861 leaves no doubt or ambiguity as to the fact that the Police Force is an indivisible entity that is commanded by the Inspector General of Police, who has vast powers; subject to the approval of the government, he can frame orders or rules concerning the organization, classification, and distribution of police force. In other words, the aforesaid provision enables the IG Police to cater to the situation, where it is expedient for him to issue such orders and make such rules, with the approval of the government, as are required to meet the contingencies related to, inter alia, prevention and detection of crimes. The overall scheme of the Police Act, 1861, and the Rules 1934 envisage the police forces as one indivisible body possessing various establishments performing the assigned functions such as District Police, Police Training Center, Crime Branch, Special Branch, Reserve Police, and so on. Each of these establishments is an integral part of the police force, and under no rules of construction, they can be construed as separate or independent Cadres. We are clear in our mind that there should be common seniority of Police Personnel serving in all the establishments to be maintained by District Police, the Range DIG, and the Central Police Office (C.P.O.) strictly as provided by the Rules in Chapter XIII, as discussed by the Honorable Supreme Court in Para 56 of the case of Gul Hassan Jatoi supra.

9. In view of the facts and circumstances demonstrated here-in-above, we are of the considered opinion that it is expedient to streamline the functioning of Forensic Division, Karachi and Forensic Science Laboratories Hyderabad and Larkana and/or any other Forensic Laboratory, subsequently established by the competent authority. In such a scenario, the service structure of the Forensic Division is liable to be streamlined for its smooth functioning,

which is a vital part of the Sindh Police that cannot be ignored. Therefore, we deem it appropriate to direct the competent authority under the Police Rules to streamline the service structure of the Forensic Science Division of the Police Department and create Promotion Avenue for the personnel of the Forensic Science Division, within three (03) months, in terms of Police Rules while applying the ratio of the judgment passed by the Honourable Supreme Court in the case of *Gul Hassan Jatoi* supra. The Sindh Government and the competent authority shall report compliance.

10. This petition stands disposed of in the above terms.

JUDGE

JUDGE

Nadir*