

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

## Constitutional Petition No.D-3402 of 2017

**Fazal Karim**

Petitioner: Through Mr. Azam Khan, advocate

Respondents: Through Mr. Abdul Jalil Zubedi, AAG a/w Raza Mian, DSP (Legal)

Date of hearing  
& Decision: 03.02.2023.

### **ORDER**

This is the second round of litigation. In the first round, the petitioner had preferred CP No.D-239 of 2015 before this Court which was disposed of vide order dated 30.03.2016 with the directions to the respondents to forward the case of the petitioner to the Committee for consideration of his appointment as Police Constable. Thereafter, the petitioner being aggrieved and dissatisfied with non-compliance with the above order filed a contempt application, which was disposed of vide order dated 19.01.2017 with certain directions.

2. The case of the petitioner is that his martyred father was serving as Head Constable in the Police Department who attained Shahadat during an encounter with the notorious dacoits of the locality. Since the Petitioner is his real son who is also a graduate and well qualified, therefore, he claims to be entitled to the appointment to the post of A.S.I in Sindh Police, but in response to his application, the Respondent No.1 issued his appointment order as Police Constable. The petitioner being aggrieved by and dissatisfied with the aforesaid decision has approached this Court for his appointment as Assistant Sub Inspector based on Shaheed.

3. Mr. Azam Khan, learned counsel for the petitioner, contended that the impugned order of rejection of the request of the petitioner for appointment of ASI on basis of Shaheed Quota passed by IGP Sindh, Karachi without giving him ample opportunity is bad both in law and facts hence liable to set aside in the interest of justice. Learned counsel contended that the petitioner has not been treated equally by the respondents, but so many other persons based on

Shaheed quota have been appointed as ASI, which is a flagrant violation of law, therefore the petitioner is entitled to be treated equally.

4. We have heard the learned counsel for the parties and perused the record with their assistance.

5. It appears from the record that the father of the applicant namely Abdul Karim Mahar embraced Shahadat in the year 2007 and the petitioner was offered the post of Police Constable and now he claims the post of ASI under Standing Order No.186/2003. The committee has unanimously rejected the request of petitioner PC Fazal Karim for re-appointment as ASI in place of Shahadat of his father.

6. Learned AAG submitted that the appointment of ASI could only be made through a competitive process by the Sindh Public Service Commission. He prayed for the dismissal of the instant petition.

7. It is a well-settled principle of law for public employment unless the appointment is in terms of the relevant rules and after a proper competition amongst qualified persons.

8. Primarily, the petition is not maintainable either on facts or on the law. However, before parting with this case, it may be observed that every person has a right to approach a Court of law for redressal of his grievance, whether a such grievance is against a private party or a public functionary. Article 199 of the Constitution restricts such right only to an aggrieved person, as contemplated under the said Article, who is aggrieved by any action or order of a public functionary or department or the Provincial or Federal Government. A person coming to Court must be fully aware of his rights i.e. whether he is entitled to such rights or not. We thus observe that despite the legal position established because of the plethora of pronouncements by the Hon'ble Supreme Court as discussed above, the present petitioner has filed this petition seeking a relief to which he was not entitled under the law.

9. In light of the above discussion, it is crystal clear that Sindh Government/police department cannot circumvent the law to make recruitment to the post of ASI and Constable, based on quota reserved for deceased/shaheed civil servants without codal formalities under the law. The appointment of ASI and Constable thus could only be made through the competitive process on merit, as provided under the recruitment rules and not otherwise.

10. In our view, the stance of the petitioner is based on erroneous premises which is discarded. In light of the above facts and circumstances of the case, this petition is found to be misconceived and is accordingly dismissed, along with the pending application(s), with no order as to costs.

**JUDGE**

**JUDGE**

Nadir\*