

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Const. Petition No.D- 4707 of 2016

(Muhammad Imran v. P.O Sindh & others)

Present:

Zafar Ahmed Rajput, J.
Zulfiqar Ahmad Khan, J.

For the Petitioner : Mr. Muhammad Hamzo Buriro,
Advocate.

For the Respondents : Mr. Zulfiqar Ali Naich, Assistant A.G
a/w Inspector Ameer Ali Shah on
behalf of DIGP, Sukkur and Inspector
Sikandar Ali Khoso on behalf of SSP,
Sukkur.

Date(s) of hearing : **17-05-2023**
Date of Order : **17-05-2023**

ORDER

Zafar Ahmed Rajput, J. The petitioner, through instant petition, seeks, *inter alia*, the following relief(s):

“(a). To declare that the act of respondents for not issuing offer order for appointment of petitioner to the post of Police Constable (BPS-05) illegal, unlawful, void ab initio and based on mala fides.

(b) To direct the respondents to issue offer order in favour of the petitioner to the post of Police Constable (BPS-05) as he has qualified all the physical, medical/written tests and completed all other codal formalities whereas, the candidates who had obtained less marks in comparison to the petitioner have been issued offer letters, which is clearly discrimination.

(c) To pass ad interim order whereby restrain the respondents from issuing another/second advertisement in respect of recruitment of police constables by ignoring the present petitioner till final disposal of instant petition”.

2. It is case of the petitioner that pursuant to an advertisement, he applied for the post of Police Constable (BPS-05) in District Police Sukkur and submitted his testimonials. He was called for his physical test, which he passed

and then he appeared in the test held on 28.08.2016 conducted by the National Testing Service - Pakistan (**NTS**), which he also passed. Then, he was referred to the Aga Khan University Hospital Laboratory at Sukkur for medical test. His antecedents report was also issued by the respondent No.4 vide its letter dated 19.09.2016 and after completing all formalities for the appointment to the said post, the petitioner was waiting for the offer/appointment order, but it transpired that the candidates who secured lesser marks were declared successful and appointed, depriving the petitioner from his legal right of appointment, hence he maintained instant petition.

3. In response, the respondent No.3, namely, DIGP, Sukkur Range filed his statement to the effect that the petitioner was found involved in a criminal case bearing Crime No.18 of 2016 registered at P.S, Cantt - Pano Akil under Sections 148, 149, 337H(ii), 395, 324 PPC, hence his case for appointment to the post of Police Constable was not recommended by the Recruitment Board Committee.

4. Learned counsel for the petitioner contends that the petitioner was involved falsely in the aforementioned case/crime which was after investigation recommended for its disposal under false B-class of the Police Rules, but the Judicial Magistrate concerned disagreeing the report of Investigating Officer took cognizance and after full-fledged trial, the petitioner was acquitted of the charge vide judgment dated 13.03.2023, passed by learned Additional Sessions Judge, Pano Akil in Sessions Case No.630 of 2016. He further contends that a qualified candidate for a post cannot be deprived from his right of appointment merely on the ground that a case was pending against him, hence, the petitioner is entitled for the relief prayed for.

5. On the other hand, learned AAG states that the aforementioned FIR was pending under investigation when the petitioner applied for the post of Police

Constable in Police Department; however, he concealed such facts as he did not mention it in his application. He further maintains that since the Police Department received unsatisfactory character / antecedents reports in respect of the petitioner, he was not issued offer/appointment letter though he qualified all the requisite tests. In support of his contentions, learned AAG has placed reliance on the cases of *Saqib Ali v. Government of Punjab and others* (**2023 PLC (C.S.) 310**) and *President National Bank of Pakistan and others v. Waqas Ahmed Khan* (**2023 SCMR 766**).

6. Heard and record perused.

7. It is an admitted position that the petitioner applied for the subject post and qualified all the tests. Nowhere in the alleged advertisement (Copy available as Annexure-A at page-17 of the memo of petition), it is mentioned that the candidate should also disclose any information as to any pending FIR or registration of cases against him. Record shows that the aforementioned crime was investigated by ASI Mumtaz Mirani, who during course of investigation, recorded statements of eyewitnesses and notable persons, in which they showed the nominated accused persons as innocent, as such, final report was submitted under Section 173 Cr.P.C for disposal of the FIR under false B-class, but the Magistrate concerned disagreed with the investigation of the I.O and issued him directions of submitting the Challan. Later, the petitioner along with other accused persons were acquitted of the charge by the trial Court vide a speaking judgment dated 13.03.2023 after a full-fledged trial. In the like nature case, a Divisional Bench of this Court at Circuit Court Larkana in C.P.No.D-992 of 2014 has already observed vide judgment dated 04.05.2021, as under:-

“9. We have carefully examined the Sindh Civil Servants Act, 1973, and Rules framed thereunder so also the Police Rules, 1974, and the Disciplinary Rules, 1988, and could not find any provision which restrict such appointment in Civil/Public service on account of the pendency of a

criminal case or where the candidate acquitted from the charges leveled in the criminal case, however, section 15 of the Sindh Civil Servants Act, 1973 provides that no person convicted for an offence involving moral turpitude shall unless government otherwise direct, be appointed to a civil service or post, which is not the case in hand. For the case of reference section 15 of the Civil Servants Act, 1973 is reproduced as under:-

15. No person convicted for an offence involving moral turpitude shall, unless government otherwise direct, be appointed to a civil service or post.

10. From the perusal of the comments filed by the respondents it appears that they have a only ground for the refusal to issue appointment order to the petitioner was a registration of a criminal case against the petitioner, from which the petitioner was acquitted, it was in between the private parties and the same was not of a serious nature, and in absence of any provision in the aforesaid laws, where in a such situation there is no any restriction on appointment then the petitioner was entitled for the appointment if otherwise he fulfilled all other requirements, the respondents not pointed out any other reason for his non appointment.

11. In the above circumstances we allow this petition and direct the respondents/competent authority to scrutinize the candidature of the petitioner for the post of police constable without taking influence from the fact of the case registered against the petitioner and if otherwise the petitioner found fit in all respect for the appointment, then his candidature may be processed for the appointment strictly under the Recruitment Rules for the said post within one month. However, it is made clear that since this petition was filed in the year 2014 therefore the age limit if the petitioner cross after the year 2014 then the same may not come in the way of his appointment as police constable.”

8. Moreover, Section 15 of the Civil Servants Act, 1973 only restricts appointment of a person who has been **convicted** for an offence involving moral turpitude and not merely registration of any FIR. We have respectfully gone through the case-law cited by learned AAG and found the same presenting distinguishable facts not attracted to the circumstances of the case at hand. In case of Saqib Ali (**supra**), the petitioner entered into a compromise in a murder case with the complainant and in the case of President National Bank of Pakistan (**supra**), the petitioner was acquitted of the charge under Section 265-K Cr.P.C. However, in the instant case, it came at the very early stage that the FIR was falsely lodged against the accused persons including the

petitioner and thus I.O recommended the same for its disposal under false B-class.

9. In view of the foregoing facts and reasons, this petition is **allowed** as prayed for with directions to the respondents to issue offer/appointment order to the petitioner after completing all requisite formalities within a period of 60-days hereof under compliance report to this Court through its Additional Registrar.

10. Instant petition stands **allowed** in the above terms.

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