

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

C.P No.D-3001 of 2018

[Sultan versus Province of Sindh & Ors]

Before:-

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Adnan-ul-Karim Memon

Petitioner : Through Mr. Ghulam Shabbir Mari advocate
Respondents : Through Mr. Rafique A. Dahri, Asstt: A.G
Date of hearing : 23.05.2023
Date of Order : 23.05.2023

ORDER

ADNAN-UL-KARIM MEMON, J. The grievance of the petitioner is that his candidature for the post of Police Constable (BPS-05) in District Matiari has been deferred / rejected and he has been declared medically unfit based on the medical report submitted by the respondent-police department, wherein it has been stated that the petitioner is suffering from Hepatitis B & C.

2. Brief facts of the case are that vide publication in a leading newspapers by the Sindh Police in the year 2016 invited applications for recruitment of 526 posts for Police Constables. Pursuant to that advertisement, the petitioner applied for appointment to the post of Constable in District Police Matiari. The petitioner was called to appear in physical efficiency test wherein he obtained 56 marks and was declared a successful candidate. Thereafter, the documents of the petitioner relating to his qualification were checked and verified by the Sindh Police Recruitment Board; finally, he was directed to appear before Aga Khan Laboratory at Hala for Medical Examination and Fitness Certificate. The petitioner after examination was found infected by Hepatitis reactive positive. The respondents vide letter dated 24.11.2016 declared the petitioner medically unfit for the post of Police Constable being a patient of Hepatitis.

3. Against the report of Board, the petitioner submitted representation for re-medical examination. However, his request was not entertained. The petitioner also filed reports of Agha Khan Laboratory of the same year and ensuing years in the memo of petition to demonstrate that he was/is not suffering from such ailment as opined by the recruitment board; such reports prima-facie show that the petitioner is not suffering from such ailment. Relying upon the aforesaid medical reports issued by Agha Khan Laboratory Hyderabad, the petitioner has stated that the recruitment board did not examine him properly and he was wrongly declared unfit. In the aforesaid backdrop, he prayed for writ of mandamus commanding respondents to conduct re-medical examination.

4. It is inter-alia contended by the counsel for petitioner that the medical report issued by a private and independent laboratory in respect of the petitioner during the same period and the ensuing years do not reflect any such ailment. Thus, he submits that action of the respondents declaring the petitioner medically unfit is arbitrary and amounts to denying an opportunity of employment to the petitioner illegally. Learned counsel also placed reliance upon the order dated 13.9.2017 passed by this Court in CP No. D- 1292 of 2017 to contend that in the said petition, an identical order has been passed. Thus, he submits that it is a fit case where the Court should command respondents to conduct re-medical examination of the petitioner to ascertain whether he is suffering from such ailment or otherwise, and if he is found medically fit for appointment, his appointment order is liable to be issued.

5. Mr. Rafique A. Dahri learned AAG submits that this petition is not maintainable under the law on the ground that no offer letter had been issued to him thus no vested right was created in his favour. He next contended that during the recruitment of Police Constables in Sindh Police, 526 candidates qualified the written test conducted through National Testing Service (NTS) and were interviewed by the Departmental Selection Committee, and in the Physical Fitness process some of the successful candidates were diagnosed with Hepatitis B & C virus; therefore, the Administrative Department floated a Summary for Chief Minister, Sindh to obtain orders whether the successful candidates, who were suffering from such disease could be appointed or otherwise. The competent authority passed order to the effect that police should keep good health to meet the challenges of duty, and the candidates who were suffering from Hepatitis B

& C virus were held to be not eligible. Learned AAG added that mere passing of written test does not create any right in favour of the petitioner to be considered for appointment in Police Force. He prayed for dismissal of this petition.

6. We have considered the arguments of counsel for the parties and have minutely gone through the material available on record with their assistance.

7. According to Recruitment Rules-2016 a candidate is required to undergo a medical examination for ascertaining whether the candidate is medically fit and not infected from Hepatitis B and C virus for the post of Constable. However, in the present case, the petitioner claims that he was not suffering from such ailment as per reports of Agha Khan Laboratory. Be that as it may, undoubtedly in a suitable case, the powers of this Court under Article 199 of the Constitution are wide enough to comprehend the issuance of appropriate directions but such powers have to be exercised with caution. Matters relating to medical evaluation of candidates in the recruitment process involve expert determination.

8. This Court should be cautious in replacing the process adopted by the recruiting agency and substituting it with a Court mandated medical evaluation. In the present case, the proper course would have been more transparent to permit the petitioner for his reassessment whether he is fit for the post or otherwise based on different reports of Agha Khan Laboratory Hyderabad as discussed supra.

9. Prima-facie, the proposal so put forward by the petitioner to send his case for re-assessment is reasonable and acceded to. This constitutional petition is disposed of with direction to the competent authority to send the petitioner for Screening and Testing for Hepatitis B and C virus infection from Agha Khan Laboratory Hyderabad and medical examination and if he is found fit in the medical examination, the petitioner shall be appointed to the post of Police Constable. The aforesaid exercise shall be undertaken within two weeks from today. The compliance report shall also be submitted through Additional Registrar of this court.

JUDGE

JUDGE

Sajjad Ali Jessar