

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 969 of 2022

(Mehmood Khan and others versus Province of Sindh and others)

C. P. No. D – 1018 of 2022

(Muhammad Saleem Khan versus Province of Sindh and others)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **20.12.2023**

Date of decision : **20.12.2023**

Mr. Illahi Bux Jamali, Advocate for petitioners in
C. P. No. D-969 of 2022.

Mr. Deedar Ali M. Chohan, Advocate for petitioner in
C. P. No. D-1018 of 2022.

Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh.

ORDER

Muhammad Iqbal Kalhoro, J. – Petitioners' case is that they had applied for the post of Police Constable (BPS-5) in Sukkur Region in terms of an advertisement flashed on relevant website. They emerged successful after being subjected to rigorous process of examination. After that, the reports about their credentials and character were called from the relevant quarters. In such reports, sent by DIGP Sukkur range, petitioners were shown involved in criminal cases, mainly one case against each one; hence, the Sindh Police Recruitment Board, in its meeting held on 22.06.2022 decided to reject their candidature, despite the fact of their acquittal in those cases, was brought in its notice and the fact that they were but a result of personal enmity and disputes between different tribes. Hence, these petitions.

2. Learned Counsel for the petitioners in order to bring home their case have relied upon orders of this Court dated 09.02.2022, 13.09.2022 and 23.02.2023 passed in the cases of Muhammad Rafique Tumrani versus Province of Sindh and others (C. P. No. D-814 of 2021), Hazoor Bux Burdi versus Province of Sindh and others (C. P. No. D-326 of 2018) and Abdullah Shah versus Home Secretary Sindh and 04 others (C. P. No. D-4060 of 2020) respectively, and have further submitted that in all the cited judgments the same issue has been dealt with at

length by this Court in favour of petitioner(s), who were selected for government job in Police Department, but against them either criminal cases were pending or had already been decided, like petitioners.

3. On the other hand, learned AAG has opposed these petitions and has relied upon President National Bank of Pakistan and others versus Waqas Ahmed Khan (2023 SCMR 766), Saqib Ali versus Government of Punjab and others (2023 PLC (CS) 310), Mirza Shahzeb versus City Police Officer, Police Line, Rawalpindi and 4 others (2023 PLC (CS) 749) and an unreported order of the Supreme Court dated 11.06.2012 passed in the case of Shahid Hussain versus District Police Officers and others (CPLA No.165-K of 2012).

4. We have heard the parties and perused the cases cited at bar besides the material on record. The reason given mainly by the respondents for declining to issue offer / appointment order to the petitioners despite being successful candidates is the fact that against them criminal cases were registered. Learned AAG, while arguing the matter, has submitted that while submitting applications for the post of Police Constable, petitioners had not disclosed such information -- registration of the cases against them. Therefore, they are not honest and straightforward persons, a sufficient disqualification in addition to their criminal antecedents to reject their candidature. However, despite our insistence to show application form and any entry therein requiring the petitioners to disclose about registration of criminal cases either pending or decided against them, he has failed to do so. We have, therefore, no reason to suspect petitioners' conduct in not disclosing such fact, which otherwise they were not required to do so in the application forms, as an inherent disqualification. And, consequently, to think, non-disclosure of such information was a result of some *mala fide* or ulterior motives on their part or a deliberate attempt to conceal such facts. Furthermore, during the process of verification of antecedents of the petitioners, the fact of criminal cases either pending or decided against them, revealed easily without much effort, goes to show that this information was not hidden and was easily accessible to anyone with a finger on a computer. Therefore, in these circumstances, non-disclosure of criminal cases by the petitioners against them, even if required, would not have made much difference over their qualification as a successful candidate for the post of Police Constable.

5. As far as issue of registration of criminal cases or their pendency before any Court etc. against the petitioners is concerned, various Benches of this Court have dealt with this issue and decided it in favour of the petitioners, the judgments of which have been submitted by the learned Counsel in defence, as cited above. The relevant provision of law, which can be referred to and cited for the purpose of taking guidance is Section 15 of the Sindh Civil Servants Act, 1973. This stipulates that no person convicted for an offence involving moral turpitude shall, unless Government otherwise direct, be appointed to a civil service or post. This provision apparently lays two conditions, which a person, otherwise selected on any post in the civil service, has to fulfill to get the appointment: that he is not a convict and that he is not a convict in an offence involving moral turpitude. The list of cases registered against the petitioners filed in comments by the respondents does not show that they have ever been involved in any offence involving moral turpitude, let alone convicted in any such offence.

6. The criminal cases, which were registered against them were run-of-the-mill and have already culminated in their acquittal and that too on merits. It is settled that acquittal of a person in a criminal case washes away declaration of guilt against him and he no longer can be termed as guilty of the offence, he was charged with. The stigma of conviction of an accused goes away, the moment he is acquitted by the competent Court of law. As registration of a case in this part of the country, where false implication of a person or the practice of complainant to throw a wide net to implicate as many family members of an accused as possible in a case is rampant, the same cannot be equated with a disqualification embodied under Section 15 of the Sindh Civil Servants Act, 1973 abridging the right of an individual to appointment which he acquires on being declared as successful. Furthermore, this part of the province is plagued with tribal disputes. The petitioners hail from the areas which are reportedly affected by such disputes, therefore, mere on a fact that there were certain criminal cases registered against them, they cannot be deprived of their right to appointment on the post of Police Constable, which they have earned by qualifying the required examination.

7. Next, we have seen the comments of relevant officials, it has been simply postulated that Sindh Police Recruitment Board when came to know about registration of criminal cases, although already acquitted,

against the petitioners, decided to reject their recommendation. But the reasons for taking such a decision have not been articulated. The decision itself does not appear to be based on any structured exercise of discretion, and is apparently, contrary to the scheme U/S 15 of the Sindh Civil Servants Act, 1973. Neither any precedent, nor the relevant statute has been cited, which may have helped Recruitment Board form an opinion rejecting the candidature of petitioners simply on registration of a criminal case against them.

8. We, therefore, do not find the decision of Sindh Police Recruitment Board rejecting the recommendation of the petitioners to the appointment sustainable in law, and consequently, set aside the same. Resultantly, the petitions are **allowed** as prayed, with no order as to costs.

Office to place a signed copy of this order in the captioned connected matter.

J U D G E

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Abdul Basit