

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D2105- 2017

(Jamil Ahmed Vs. Province of Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
-----------------	-------------------------------

Before;

Adnan-ul-Karim Memon, J;
Muhammad Abdur Rahman, J;

Date of hearing and order: 16-05-2024.

Mr. Muhammad Qayyum Arain, advocate for the petitioner.

Mr. Ghulam Mustafa G.Abro, Additional A.G, Sindh along with Shafi Muhammad Khaskheli DSP (Legal) on behalf of SSP Sukkur

ORDER.

Adnan-ul-Karim Memon J:- Through this petition, the petitioner Jamil Ahmed has approached this Court for his appointment as a Police Constable in Sindh Police as per the final merit list issued by the Senior Superintendent of Police, Sukkur.

2. When confronted to the learned counsel for the petitioner that the Supreme Court in the case of *President National Bank of Pakistan Vs. Waqas Ahmed Khan (2023 SCMR 766)* has declined relief to the private respondent in that case on the premise that sanctity cannot be accorded to acquittal under section 249-A or 265-K Cr.P.C. Furthermore the Supreme Court in the case of *Faraz Naveed Vs District Police Officer Gujrat 2022 SCMR 1770* has held that the police force is a disciplined force with cumbersome accountability and responsibility of maintaining law and public order in the society and populace, therefore, any person who wants to be part of the disciplined force should be a person of utmost integrity and uprightness with unimpeachable/spotless character and clean antecedents; that despite the acquittal, it is the privilege and

prerogative of Sindh Police Force. So, it is for the department to examine fairly and equitably whether the petitioner has been completely exonerated or not and his further induction may not become a constant threat to the discipline of the police force and public confidence and may also not demoralize and undermine the environment and frame of mind of the upright and righteous members of the force, therefore a person having criminal antecedents would not be fit to be offered or appointed in Police Force.

3. After arguing the matter at some length, he has opted to withdraw the listed application for restoration of the petition which was dismissed for non-prosecution vide order dated 13.4.2022. At this stage, we reminded him that the petition can be heard and decided on merits as issue involved in the matter has already been set at naught by the Supreme Court and no further time is required to be given to the parties. He insisted that the matter may be restored to its original position and be decided on merits. The proposal seems to be fair. However, the learned Additional Advocate General argued that it was established on record that the petitioner had a criminal history; therefore, he cannot be a member of the disciplined force and does not deserve any leniency by this Court as this would hurt other members of the force if he is allowed to join the police force. Learned AAG further submitted that the case of the petitioner was placed before the competent authority, who withdrew the recommendation regarding the appointment of the petitioner as Police Constable in Sukkur Range on the premise that he was involved in five criminal cases of heinous nature and he was called to appear for medical examination and character verification, but he failed to put his appearance as he had already been declared proclaimed offender in the FIR No. 44/2003, 08/2018, 44/2014, 17/2018, 02/2023 of Police Station Bagarji and Tamachani; however, he has been acquitted only in FIR No. 08/2018 and 44/2014 as such mere acquittal in two cases is no ground to appointed him as police

constable. He prayed for the dismissal of the instant petition on merit.

4. We have heard learned counsel for the parties on the listed application as well as on merits.

5. This Court has already discussed the subject issue involved in the present proceedings in the case of Abdul Ghani supra, after going through the judgments of the Supreme Court in the cases of National Bank and Faraz Naveed (Supra) held as under:-

*“15. In view of hereinabove facts and circumstances of the case and by following the dicta laid down by the Hon’ble Supreme Court as above we are of the view that strict application of Section 15 of the Act without reading it with the proviso to Section 6(3) *ibid*, is not appropriate to accommodate the Petitioners (except those who have been discharged by the Courts in “C” class) in any Employment with the Police Department as their antecedents and character does not appear to be satisfactory as per the criterion laid down by law as well as the judgments of Supreme Court; hence, their petitions are liable to be dismissed and it is so ordered. Insofar as the cases wherein the Police Report filed under Section 173 Cr.P.C. have been cancelled in “C” class, are concerned, the opinion formed by this Court shall not apply and their cases may be considered by the Respondents in accordance with law without being influenced by the above findings. Their petitions are allowed to this extent.”*

6. Since the Supreme Court has decided the issue involved in the present proceedings as such the decisions rendered by this Court in various Constitution Petitions allowing the petitions cannot be cited as binding precedent and relied upon in the presence of the judgment of the Supreme Court which has binding effect under the law, for the reason that under the command of the Constitution and law, the Supreme Court has complete power to interpret laws, and its decisions are binding on all other courts in Pakistan as per Article 189, as such it is necessary for this Court to have look at the decisions of the Supreme Court, firstly in the case of National Bank (Supra), the issue before the Supreme Court was that the employee at the time of his appointment with the Bank was involved in a criminal case which fact was concealed by him, whereas, some proceedings were initiated against him for such concealment and

during this process, he was acquitted by the Court under Section 265-K Cr.P.C. The employee approached the learned Peshawar High Court and his petition was allowed by directing the Bank to allow him to join. The Bank appealed to the Supreme Court and after examination of the facts as well as the law, it was held that notwithstanding the acquittal of the employee under Section 265-K Cr.P.C., it is settled law that even if the allegations leveled in the FIR are admitted to be false, even then without recording of evidence, it cannot be said that there was no probability of conviction of the accused. It was further held that the same sanctity cannot be accorded to an acquittal at an intermediary stage such as under section 249-A or 265-K, Cr.P.C. as available for those recorded and based on full-fledged trial after the recording of evidence. The entire focus of the Supreme Court was that the employer cannot be forced to accept an employee as a cashier in its Bank who had been involved in a criminal matter, even though he was acquitted under Section 265-K Cr.P.C. The second case of Faraz Naveed (Supra) pertains to the Police Department and is more squarely applicable to the cases at hand. In that case, the petitioner was appointed as ASI in the Police Department and was thereafter indicted in an FIR and was awarded a death sentence; however, his Criminal Appeal was allowed by the Lahore High Court and he was acquitted on the benefit of the doubt. During the time he was in jail, he was served with a show cause notice and was dismissed from service. After acquittal, he filed a departmental Appeal which was dismissed, and thereafter, he filed a Service Appeal in the Punjab Service Tribunal which was also dismissed and the matter came before the Supreme Court. The Supreme Court after a threadbare examination of the facts, law as well judgments from ours and Indian jurisdiction was pleased to dismiss the Appeal. While doing so it was held that if the acquittal is found as a result of extending the benefit of the doubt or some other technical reasons, there is no bar for initiation of departmental inquiry and it is the prerogative; rather an onerous responsibility of the employer to consider nature of the offense for

an appropriate action interdepartmentally. It was further held that despite acquittal in criminal proceedings, a person can still be found to have committed misconduct in the departmental proceedings as both are independent.

7. Primarily, the police force is a disciplined force; it shoulders the great responsibility of maintaining law and order and public order in the society; that people repose great faith and confidence in it; that it must be worthy of that confidence; that in recent times, the image of the police force is tarnished and instances of police personnel behaving in a wayward manner by misusing power are in Public domain and are a matter of concern. This factual position is also a cause of great concern these days in our Country as well. On numerous occasions, we come across the involvement of Police personnel in routine as well as heinous crimes, and even if they are apprehended, are let off by the Courts due to faulty and supportive investigation by their brethren by extending the benefit of the doubt. Taking guidance from these observations, it is observed that this must stop and Courts are also required to play their part and let this issue be decided by the Executive / Appointing Authority which in all fairness is in a much better position to ascertain facts and the relevant ground realities. They have already constituted respective high-powered Committees under Sindh Recruitment Rules 2022 to examine such cases threadbare, and thereafter take an appropriate decision in this regard. There may be a situation in which any of these persons may become eligible for an appointment if the Committee so decides and recommends. The said Committee can always examine the contents of the FIR, the nature of the offense, and the behavior of the accused towards Courts and law and so forth. The Courts showing restraint shall let the concerned Authority exercise its discretion and be also responsible for such appointment, if any. However, in the present case, this exercise has already been undertaken and the earlier recommendation has been withdrawn by competent authority by calling upon the petitioner to appear, but he

failed to put his appearance as he was/is facing criminal cases and in two cases as cited *Supra* had been declared as proclaimed offender, which are the murder cases of Police Station Bagarji. If this is the position of the case, Section 15 of the Sindh Civil Servants Act, 1973 will not be helpful to the petitioner.

8. Touching the basic Provision of Section 15 of Sindh Civil Servants Act, 1973, this Court has already held that this section cannot be read in isolation as even if a person has been appointed being qualified in terms thereof, such an appointment being on probation for a certain period has to be formally confirmed under Section 7 of the Act, subject to fulfillment of the proviso to Section 6(3) of the Act which provides that in the case of initial appointment to a service or post, a civil servant shall not be deemed to have completed his period of probation satisfactorily until his character and antecedents have been verified as satisfactory in the opinion of the "appointing authority". Therefore, even a probationer can be refused confirmation if he does not fulfill the criteria laid down above, therefore, it is not appropriate, at this stage, to accommodate the Petitioner in the Police Force as his antecedents and character do not appear to be satisfactory for the reason that when he applied for the post of Constable, he failed to disclose his pending criminal cases and after, when his antecedents were checked, it was transpired that he was indulged in 5 heinous criminal cases including murder case.

9. Prima facie, his antecedents, and character do not meet the criterion laid down by law as well as the judgments of the Supreme Court; hence, this Court cannot come to rescue the petitioner at this stage and direct the respondent police department to accommodate him in Police Force as Constable as they have already declined the request of the petitioner in terms of the decisions of the Supreme Court.

10. In view of hereinabove facts and circumstances of the case and by following the dicta laid down by the Supreme Court as above, the listed application CMA No. 1884/2022 is allowed and the petition is restored to its original position and dismissed on the premise that the petitioner cannot be granted relief as prayed as he is involved in heinous crimes as discussed *Supra*.

Judge

Judge

Nasim/P.A