

## ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Constitution Petition No. D- 233 of 2024

*(Munwar Hussain Vs. P.O Sindh & others)*

DATE	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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Before;

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

**Date of hearing and order: 22.05.2024.**

Mr. Noor Hassan Malik, Advocate for the petitioner.

Mr. Shahryar Imdad Assistant Advocate General.

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**Adnan-ul-Karim Memon J:-** Petitioner Munawar Hussain through this petition, has approached this Court for his appointment as Police Constable in Sindh Police as per his offer letter dated 19.10.2023 issued by the Senior Superintendent of Police, Khairpur, inter-alia on the ground that despite completing all legal and codal formalities for the post of Police Constable, the respondents have deprived him of his legal and fundamental right, which is illegal and unlawful act on their part; even though the petitioner moved applications to the competent authority for redressal of his grievances, but he was not bothered to hear the petitioner and his request was declined on the analogy that he was involved in criminal case.

2. Learned counsel for the petitioner submitted that the co-candidates who were selected along with the petitioner were also issued appointment letters and they are performing their duties, however, only the petitioner has been singled out without legal justification. He prayed for allowing the petition.

3. The learned Assistant Advocate General present in Court 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. The learned AAG submitted that the case of the petitioner was placed before the Sindh Police Recruitment Board in the meeting held on 29.1.2024 for reconsideration and Board withdrew its recommendation regarding the offer of appointment of the petitioner as Police Constable in Sukkur Range. He prayed for the dismissal of the instant petition.

4. We have heard learned counsel for the parties and perused the material available on record.

5. It appears from the record that the Petitioner had applied for the post of Police Constable in the year-2022. He had qualified Physical, written and Via-Voce Tests. Whereas, Incharge CRO Khairpur was directed by the then SSP Khairpur for character verification in respect of the petitioner vide this office letter No: OI/SSC/7972 dated 19.10.2023, who after checking and verification reported that the petitioner was involved in FIR No: 340/2022 under section 384, 385, 511, 427, and 506/2-PPC of PS Tipu Sultan District East, Karachi, in such view the disclosure Review Board so constituted recommended to withdraw the selection and rejection of case of petitioner for the post of Police Constable SPD-490.

6. In view of such state of affairs, when confronted to the learned counsel for the petitioner about the aforesaid factum as well as with the observation made by the Supreme Court in the case of *President National Bank of Pakistan Vs. Waqas Ahmed Khan (2023 SCMR 766)*, whereby the relief was declined to the private respondent 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.

7. The learned counsel for the petitioner submitted that this Court has already discussed the subject issue involved in the present proceedings in the case of Abdul Ghani vs Province of Sindh and others (CPD No. 6135/2023 & others connected petitions), 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.”*

8. The learned counsel for the petitioner emphasized that the case of the petitioner is distinguishable from the cases decided by the Supreme Court as discussed supra as the criminal case registered against the petitioner had already been culminated into “C” class by the order dated 24.2.2023 passed by the learned Anti-Terrorism Court No. XVI Karachi, which explicitly show that subject F.I.R was

not converted into challan and criminal case ended before issuance of offer letter dated 19.10.2023, as such the applicant cannot be held disqualified to be appointed as Police Constable in Sindh Police. He further stressed on the point that insofar as the cases wherein the Police Report filed under Section 173 Cr.P.C. have been cancelled in "C" class, the opinion formed by this Court in the case of **Abdul Ghani** supra shall not apply and his /her case needs to be considered by the Respondents in accordance with law without being influenced by the findings recorded in the aforesaid case.

9. learned AAG has emphasized that the basic Provision of Section 15 of Sindh Civil Servants Act, 1973, 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 case and after, when his antecedents were checked, it was transpired that he was indulged in one criminal case. He reiterated his submissions as recorded and further added that the antecedents, and character of the petitioner 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. We are not convinced with the suggestions of the learned AAG for the simple reason that the criminal case registered against the petitioner had already been culminated into "C" class and the matter was not converted into charge sheet and there was no occasion for the petitioner to either seek quashment of F.I.R under section 561-A C.r.P.C or acquittal under section 249-A C.r.P.C thus the ratio of the judgments passed by the supreme Court in the cases of National Bank and Faraz Naveed (Supra) will not come in the way of the petitioner as the petitioner had already been discharged from the criminal case much before his appointment in terms decision of the trial court as discussed supra.

11. However, at the same time, we are sanguine of the fact that in disciplinary force, it is expected that the persons having their character above board, free from any moral stigma, are to be inducted. Verification of character and antecedents is a condition precedent for appointment to the police force.

12. Our criminal justice is founded on the Code of Criminal Procedure, Pakistan Penal Code Qanoon-e Shahadat Order to lay norms for the admissibility of evidence. Registration of a criminal case against a person remains as an accusation of a crime or an offense till on conviction it culminates into a certainty to the guilt of a Government servant and on acquittal one is obliterated of all the allegations. The involvement of a person in a criminal case does not mean that he is 'guilty'. He is still to be tried in a Court of law and the truth has to be found out ultimately by the Court where the prosecution is ultimately conducted. In the present case, the petitioner had been discharged from the alleged charges much before his induction in Police Force. Normally a person convicted of an offense involving moral turpitude should be regarded as ineligible for Government Services. However, in cases where the Appointing Authority feels that there are redeeming features and reasons to believe that such a person has cured himself of the weakness, specific approval of the Government may be obtained for his employment. The aforesaid proposition has been set at naught

by the Supreme Court of Pakistan in the case of the District Police Officer Mainwali and others v. Amir Abdul Majid, 2021 SCMR 420.

13. In view of the above position of the case, prima facie, we see no legal impediment to continuing withholding of his appointment order for the aforesaid post on the analogy as put forward by the respondent-Police Department.

14. Learned AAG thus in our view has failed to justify the impugned action of the official respondents.

15. As a result of the foregoing discussion, we dispose of the instant petition along with the pending application(s), with directions to the competent authority / Inspector General of Police, Sindh to scrutinize the candidature of the petitioner for the post of Police Constable (BPS-05) and if the petitioner is found fit in all respects to be admitted as Police Constable in Sindh Police, his candidature, in terms of the offer letter issued to him on 19-01-2023, may be processed for the appointment strictly under the Recruitment Rules for the aforesaid post within a week from the date of communication of this order and submit compliance report through Additional Registrar of this Court.

JUDGE

JUDGE