

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**

**CMA No. D-513 of 2021**

**C.P No. D-39 of 2013**

**PRESENT: Mr. Justice Muhammad Saleem Jessar  
Mr. Justice Jawad Akbar Sarwana**

Petitioner/ Applicant : In person  
Zohaib Hassan

Respondents / State : through Mr. Abdul Hamid Bhurgri,  
Addl. A.G Sindh for the alleged  
contemnor a/w SIP Ali Dost Chandio  
on behalf of the then SSP Larkana.

Dates of hearing : 13.02.2024

Date of Order : 28.02.2024

**ORDER**

**Muhammad Saleem Jessar, J.-** The petitioner / applicant has filed instant application (CMA No.513/2021), seeking initiation of contempt proceedings against the alleged contemnors for deliberately violating and defying the Order dated 24.09.2014 passed by a learned Division Bench of this Court in the instant petition.

2. Brief facts of the case are that the petitioner had filed instant constitutional petition stating therein that he is son of ASI Akhter Hussain who had rendered services in the Police Department for more than 31 years till the filing of this petition; however, now he is no more in this world, therefore, the claim of the petitioner was that he is entitled to be appointed against the relevant quota / scheme. The Petitioner had applied for the post of Constable and was declared fit in physical test, thereafter he also succeeded in the written test and his name appeared at S.No.21 in the merit list of successful candidates issued by Respondent No.4. The grievance of the Petitioner was that he was seriously shocked on coming to know about the

appointment of 37 persons as Constables under the above said scheme, whereas he was deprived of his right. According to the petitioner, Respondent No.3 appointed even those 14 persons to the post of 'Constable' who had even neither applied, nor appeared in the written test and nor appeared before any Committee. Their names appears at S.No:1,8,9,22,23,24,25,27, 30,31, 34,35,36 and 37 of the list of selected candidates. The petitioner, therefore, filed this petition with the prayer to direct the respondents to issue appointment order in favour of the petitioner for the post of Police Constable on the basis of prevailing policy of the Government and the relevant Standing Orders issued by the competent authority in the Police Department.

3. This petition was disposed of vide Order dated 24.09.2014 along with several other similar petitions whereby a Division Bench of this Court directed that the cases of all the petitioners in those petitions, including the present petitioner, be considered on the basis of relevant policy within the parameters described in the Judgment reported in 2013 PLC (C.S) 1275. Thereafter, the petitioner approached the Senior Superintendent of Police, Larkana and submitted true copy of the above order; however, no action was taken in the matter, thus he filed instant contempt application stating therein that he had repeatedly approached the Respondents / Contemnors and requested them to make compliance of the above order passed by this Court but they merely put the petitioner on false hopes. According to the petitioner, since the case for consideration of his appointment on Son-Quota policy has not yet been processed which is clear violation of the Court's order, therefore, contempt proceedings may be initiated against the respondents / contemnors under the Contempt of Court Act for willful and deliberate defiance of the orders of this Court. The petitioner has further prayed in the Contempt Application for directing contemnors No. 01 to 03 to ensure compliance of above order dated 24.09.2014 and also ensure issuance of appointment order in favour of the petitioner against the post of Police Constable in terms of relevant Standing Orders and policy of Police Department without further loss of time.

4. Upon service of notice of the Contempt Application, Deputy Inspector General of Police, Larkana Range had filed parawise comments dated 20.01.2015. However, again on 26.10.2021, Deputy Inspector General of Police, Larkana Range submitted a Report in this petition.

5. In the earlier parawise Comments submitted in the year 2015, it was stated that in pursuance of above said order passed by a Division Bench of this Court in this petition, matter was moved to the Inspector General of Police, Sindh Karachi, who directed that recommendations of the Committee along with relevant documents may be sent to CPO, Sindh Karachi, for taking further necessary action, as laid down in Standing Order No. 279/2014 and accordingly, necessary directions were issued to all SSPs' / SSP, of Larkana Range. Ultimately, the I.G. Sindh directed to make a request to this Court for extending more time until new vacancies are sanctioned by the Government for recruitment of the candidates against son quota in Larkana Range.

6. However, in the subsequent Report dated 26.10.2021 submitted by DIG, Larkana Range, after reiterating same facts as stated above, he added in para (3) as under:

*"That, it is pertinent to submit here that all standing orders issued by the IGP, Sindh Karachi have been withdrawn in the light of judgment passed by Hon'able Supreme Court of Pakistan in Civil Petitions No. 493, 494, 505 to 508, 529 to 532 and 911 to 917 of 2015. The relevant portion of the Judgment is re-produced as under:*

*"All the Standing Orders issued from time to time by different Inspector Generals of Police/Provincial Police Officers without approval of Provincial Government are declared to be illegal and void to the extent of prescribing the recruitment rules, terms and conditions of service of the officers/men in Sindh Reserve Police including devising of transfer policy and pertaining to the assignment of seniority in violation of rules.*

*The Inspector General of Police Sindh is directed not to issue any Standing Order under section 12 of the Police Act, 1861 without approval of Provincial Government and even with the approval of Provincial Government no orders can be issued by Inspector General of Police pertaining to the recruitment and terms and conditions of service of the members of the Police Force in different branches and cadre, as such powers can be exercised by Provincial Government only by virtue of section 2 of Police Act, 1861."*

It was further stated:

*"That, after withdrawal of standing orders, the IGP, Sindh Karachi, vide his letter No. 9201-89/EB-II/T-7/S&S dated 25.05.2016, issued recruitment policy against son-quota called "Sindh Police Recruitment Board".*

7. We have heard the petitioner who appeared in person as well as learned Additional Advocate General, Sindh appearing for the alleged contemnors, and have perused the material available on the record.

8. The petitioner submitted that through this petition he has claimed appointment in Sindh Police on the basis Son-Quota in terms of Standing Order No.260 of 2011 According to him, he applied for the post of Constable and in the merit list of successful candidates issued by the respondents, his name was mentioned at S.No.21 under the "Sons Quotas" Scheme. However, when he was not appointed despite having been declared successful, he filed this petition, which along with several other petitions was ultimately disposed of by way of common order dated 24.09.2014. Thereafter, in compliance of the said order, he approached the respondents and moved application as per direction given in the Order, and consequently, he was declared successful even then, he was deprived of his meritorious right. Therefore, he filed listed contempt application (M.A. No.6883/2014). In support of his submissions, he placed on record list of appointees and claimed that even those persons have been given appointment orders, who were not participants of the list and their names were not mentioned in the merit list. He further submitted that identical petition was also filed by some of the candidates before this Court (Circuit Court Hyderabad) being C.P. No. D-117/2015 which too was allowed in terms of order dated 26.05.2016. He next submitted that Department / Provincial Government had filed Civil Petition No. 652-K of 2016 before the apex Court which was also dismissed and order passed by learned Division Bench of this Court at Hyderabad was upheld. In support of his contention, he has placed copies of said orders on record. He also placed copy of an appointment order and submitted that the said appointee namely, Muhammad Rafique, was also not participant of the merit list but even then he has been given appointment order by SSP Larkana, hence he submitted that the respondents / alleged contemnors have failed to make compliance of orders dated 24.09.2014, hence they may be prosecuted and he may be appointed on the basis of relevant Quota /Scheme.

9. On the other hand, learned Additional A. G. Sindh, opposed the submissions made by the petitioner and contended that standing orders on the basis whereof the petition was allowed, have been declared null and void by Hon'ble Supreme Court of Pakistan, therefore, the listed application being devoid of merit, is liable to be dismissed.

10. In the instant case, as stated above, while opposing the listed contempt application filed by the petitioner, the main stress laid down by learned

A.A.G. is upon the judgment of Honourable Supreme Court passed in in Civil Petitions No. 493, 494, 505 to 508, 529 to 532 and 911 to 917 of 2015. In fact, the said judgment has been reported as *GUL HASSAN JATOI and others Vs. FAQIR MUHAMMAD JATOI and others* (2016 SCMR 1254). Even in the Report / comments dated 20.10.2021 submitted by DIG, Larkana Range against the contempt application, the main ground taken was that all the standing orders including the one which is subject matter of this petition, were declared null and void by Honourable Supreme Court in the above said Civil Petitions i.e. the case of **Gul Hassan and others**, supra.

11. In this context, it may be observed that the respondents / contemnors, so also the learned Additional A.G. have fallen under a grave misconception, inasmuch as; they have treated the findings given by the Sindh Service Tribunal in its judgment dated 13.3.2005 passed in Appeals Nos.130 to 134 of 2014, 2, 237 and 238 of 2015 which was assailed before Honourable Supreme Court by filing above said Civil Petitions, to be the direction given / order passed by the Apex Court. To clarify this position, it would be advantageous to reproduce the relevant portions from the said judgment of Honourable Supreme Court passed in the case of **Gul Hassan and others**, supra. The opening para of the judgment reads as under:

*“These Petitions for leave to Appeal are directed against judgment dated 13.3.2005, of the Sindh Service Tribunal, Karachi, whereby 08 Service Appeals filed by the petitioners / Respondents were disposed of, vide impugned judgment in the following terms:-*

- i. ....
- ii. ....
- iii. ....
- iv. ....
- v. **All the Standing Orders issued from time to time by different Inspector Generals of Police/Provincial Police Officers without approval of Provincial Government are declared to be illegal and void to the extent of prescribing the recruitment rules, terms and conditions of service of the officers/men in Sindh Reserve Police including devising of transfer policy and pertaining to the assignment of seniority in violation of rules.**
- vi. **The Inspector General of Police Sindh is directed not to issue any Standing Order under section 12 of the Police Act, 1861 without approval of Provincial Government and even with the approval of Provincial Government no orders can be issued by Inspector General of Police pertaining to the recruitment and terms and conditions of service of the members of the Police Force in different branches and cadre, as such powers can be**

exercised by Provincial Government only by virtue of section 2 of Police Act, 1861.

- vii. ....
- viii. ....
- ix. ....
- x. ....
- xi. ....
- xii. ....”

12. The Honourable Supreme Court then after elaborately discussing all the points involved in the said appeals / petitions, concluded as under:

*“76. For the reason stated hereinabove, we allow all these appeals and set aside the judgment of the learned Sindh Service Tribunal. It is expected from the Sindh Government and the Inspector General of Police, Sindh that the directives contained in this judgment shall be implemented in its letter and spirit without any undue delay and the seniority list of all the Police personnel belonging to any of the establishment created in terms of Rule 1.4 of the Police Rules, 1934 shall be prepared within the time stipulated in the judgment.”*

13. From above, it is crystal clear that at no point of time Honourable Supreme Court has declared the Standing Orders in question to be null and void, rather such finding given by the Sindh Service Tribunal was set aside by the Apex Court while delivering said judgment.

14. However, from the Report dated 20.10.2021 submitted by DIG Larkana Range in reply to the listed Contempt Application, it appears that after withdrawal of standing orders, rightly or wrongly, but certainly not consequent upon any direction issued by Honourable Supreme Court, as alleged, the IGP, Sindh Karachi, vide his Letter No. 9201-89/EB-II/T-7/S&S dated 25.05.2016, had issued a Recruitment Policy against **son-quota** namely, "Sindh Police Recruitment Board". However, it has not been alleged that consequent upon the withdrawal of the Standing Orders, the appointment made on the basis of such standing orders were also withdrawn / cancelled. Legally speaking, in fact, even if such action would have been taken, the same would have been surely totally illegal and unlawful, as once a beneficial order is passed in favour of a person / employee and the same has been acted upon, then vested / valuable rights accrued in favour of the person / employee concerned which could not be snatched in an arbitrary and capricious manner. In this connection, reference can be made to a recent judgment pronounced by Honourable Supreme Court in the case of *PAKISTAN RAILWAYS through*

*Chief Executive Officer / Senior General Manager, Lahore and another Vs. MUHAMMAD ASLAM*, reported in 2024 SCMR 97, wherein it was held as under:

*“4. A survey of the impugned judgment depicts that the respondent filed an appeal under Section 4 of the Service Tribunals Act, 1973 to challenge the departmental order dated 02.08.2018. The respondent was absorbed as Guard Grade-I vide Notice dated 06.08.2012, but, after a lapse of six years, he was denied the absorption vide Notice dated 02.08.2018 when certain valuable rights had already accrued in his favour which could not be denied keeping in mind the principle of locus poenitentiae. It is a well settled exposition of law that the power of rescission remains with the relevant authorities to undo the action till a decisive step is taken or as long as certain rights are not created or the action was found to be patently illegal. The record reflects that the department before the learned Service Tribunal failed to justify the action of **rescinding** the earlier order issued in favour of respondent, therefore, the learned Tribunal reached to the conclusion that the respondent was discriminated and the action taken against him was illegal and as a consequence thereof, the service appeal was allowed.”*

15. Apart from above, we also find weight in the submissions made by the petitioner. It seems that although through instant petition, the petitioner had claimed his appointment with Sindh Police in terms of Standing Order No.260 of 2011 on the basis of “Son Quota”, however, his entitlement at the material time fell under “Serving Employees Quota”, as his father was alive and in service at that time having completed at least 25 years of service. Petitioner actually qualified for Serving Employees Quota. It is also note-worthy, that presently claim of the petitioner could also fall under the “Son-Quota” of the deceased employees as, father of the petitioner has expired. Be that as it may, the respondents / contemnors have not denied that in the merit list of successful candidates issued by the respondents name of the petitioner had appeared at S.No.21. We have also perused the documents placed on record by the petitioner. From the perusal of these documents, the submissions made by the petitioner get strength, inasmuch as; even those persons have been given appointment orders, who were not participants of the list of successful candidates and their names were not mentioned in the merit list. We have also perused the order passed by a Division Bench of this Court in C.P. No. D-170/2015 in an identical matter. The said petition was filed by some of the candidates before this Court (Circuit Court Hyderabad) with similar grievance as made by the petitioner in instant petition. The said petition was allowed

vide Order dated 26.05.2016. The relevant portion from the said order is reproduced hereunder:

*"3. In view of the above, we allow the petition and direct the respondents to appoint the petitioners in police department on son quota as recommended by the Committee referred to above."*

16. It seems that the Provincial Government had filed Civil Petition No. 652-K of 2016 before Honourable Supreme Court which was also dismissed and order passed by learned Division Bench of this Court at Hyderabad was upheld.

17. Needless to emphasize that Superior Courts have taken a serious view while dealing with similar cases relating to the rights of the family of a deceased, retired as well as a serving employee.

18. In this context, reference may be made to the case of *MUHAMMAD TAQI SHAH Vs. The SECRETARY EDUCATION DEPARTMENT GOVERNMENT OF SINDH and 2 others*, reported in 2018 PLC (C.S.) Note 92, decided by a Division Bench [Larkana Bench]. In the said case it was, *interalia*, held as under:

**"7. We have already observed that in our humble view the right of appointment of a child of deceased Civil Servant in Government was a kind of pensionary benefit, the family of the deceased must have been adversely affected in terms of financial loss ever since the death of bread earner. The facts of this case remind us of the case of Prof. Ghazi Khan Jakhrani in which the Hon'ble Supreme Court has examined the effect of non-payment of pension for several years to Prof. Jakharani after his retirement and he has died without receiving pension owing to the lethargic behaviour of the government functionaries. In terms of the notification quoted above, the government functionaries have practically denied service benefit to the family of the deceased civil servant namely deceased Raham Ali Shah who served in education department for 36 years. The education department in the case in hand seems to be guilty of similar bad governance as have been discussed in para.7 of the judgment by the Hon'ble Supreme Court in the case of Prof. Jakhrani reported in PLD 2007 SC 35. Relevant observations of Hon'ble Supreme Court at page 43 of the judgment are reproduced below:-**

**"7. It is pathetic condition that Government servants, after having served for a considerable long period during which they give their blood and sweat to the department had to die in a miserable condition on account of non-payment of pension/pensionary benefits etc. The responsibility, of course,**



*can be fixed upon the persons who were directly responsible for the same but at the same time we are of the opinion that it is an overall problem mostly in every department, where public functionaries failed to play their due role even in accordance with law. Resultantly, good governance is suffering badly. Thus, everyone who is responsible in any manner in delaying the case of such retired officers/official or widows or orphan children for the recovery of pension/gratuity and G.P. Fund has to be penalized. As their such lethargic action is in violation of Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973. Admittedly, it is against the dignity of a human being that he has to die in miserable condition and for about three years no action has been taken by the concerned quarters in finalizing the pension case and now when the matter came up before the Court, for the first time, they are moving in different directions just to show their efficiency and to clear their position before the Court. Such conduct on their behalf is highly condemnable and cannot be encouraged in any manner."*

In the case in hand, too, not a single plausible explanation has been offered by the respondents for their failure during the last 10 years to discharge their statutory duty following the death of a Government Servant during service by not providing a job to one of the children of deceased civil servant. In the given facts of the case in hand, since we are of the view that this is also a case of denial of benefit of service to the family of civil servant the respondents are also required to be reminded of the following observations of the Supreme Court from the said judgment."

It was further held:

"8. The filing of petition by itself was notice to the Secretary, Education, Government of Sindh. The Respondents have not challenged entitlement of the petitioner for his appointment against deceased quota. Had the policy been honestly and properly applied by the Government, the petitioner should have been inducted in the service in 2010. He is still working for the enforcement of his right in terms of the policy after 10 years of the death of his father during service.

9. In view of above facts and the observations of the Honourable Supreme Court, this petition is allowed and the respondents are directed to appoint the petitioner in BPS-17 on the basis of his minimum qualification with seven annual increments from the date on which Respondent No.3 has forwarded his application within a period of 30 days."

19. In the case reported as *MUHAMMAD KHALID NAZIR Vs. D.C.O. and others* (2008 PLC (C.S.) 1200 [Lahore]) the relevant facts were that one Nazir Ahmad, who was father of the petitioner in that case, after serving as

Chowkidar in the office of the Deputy Commissioner Bahawalpur retired from service on 15-6-2001. After his retirement, his son viz. the petitioner submitted an application for his appointment in the same department, but the same was not considered. Subsequently the Executive District Officer (Revenue) Bahawalpur advertised various posts of Naib Qasid, Chowkidars, Baildars and Malies etc. and invited applications from the eligible candidates. The petitioner also submitted an application for the post of Naib Qasid/Chowkidar against the **20% quota reserved for the children of in-service or retired employees** of the Government but was not appointed, thus he filed writ petition praying therein that the respondent may be directed to appoint him as Naib Qasid / Chowkidar in BS-1 under the 20% reserved quota for the children of the working or retired civil servants. Learned Division Bench while deciding the matter, held as under:

*“3. It is an admitted fact that the petitioner is the son of a retired employee of the Revenue Department. That being so his right to be considered for appointment against 20% quota cannot be denied. The foul respondent played was that instead of calculating the 20% quota against the total No. of the posts in the cadre, determined the same only against the posts, which were advertised for recruitment. This mode of calculation of posts was undoubtedly against the mandate of Punjab Civil Service (Ratio of Recruitment) Rules, 1973.”*

It was further held:

*“9. The Departmental Authorities who have to make appointment to any post in the government office have to exercise their authority honestly and objectively in public interest and strictly in accordance with law without being influenced by any extraneous consideration or the subordination of any superior authority. In the instant case it has become abundantly clear that the Departmental Selection Committee and then the Appointing Authority both erred in law while allocating the seats to the candidates against the posts for reserved quota.*

*10. The writ petition is allowed with costs. The petitioner shall be considered for appointment against the reserved quota of the number of vacancies to be calculated in accordance with rule 3 of the Punjab Civil Service (Ratio of Recruitment) Rules, 1973 by applying the same to the total number of posts of Naib Qasids in the Cadre so as to maintain the prescribed percentage of the over all strength of the cadre and not to the actual vacancies existing or announced at a given time.*

*11. In order that effective relief is provided to the petitioner, it is further ordered that it shall be the personal responsibility of the present incumbent of the Appointing Authority to undertake all necessary and effective measures, including the following, to implement this judgment within a period of thirty days:*

*(i) The number of the posts against reserved quota is calculated in accordance with rule 3 of the Punjab Civil Service (Ratio of Recruitment) Rules, 1973 by applying the 20% quota to the total number of posts in the Cadre;*

*(ii) The case of the petitioner for appointment against such calculated reserved seats shall be considered on the basis of the merit determined by the Departmental Selection Committee.....*

*(iv) The petitioner, in case of appointment shall be entitled to all back benefits as well because he was not only deprived of his valuable rights but was also unnecessarily dragged into litigation by contesting a cause to which the respondents had no justification for defence.*

20. In another decision given by a Division Bench of Peshawar High Court in the case of **ANWAR ALI Vs. GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary, Peshawar and 3 others**, reported in 2018 PLC (C.S.) 381 [Peshawar], it was held as under:

*“3. In the comments furnished by the respondents, though they have not denied the status of the petitioner to be son of the deceased Said Wali, but it has been asserted that the policy regarding the appointment of the children against the quota meant for the deceased class-IV employees is applicable to those individuals whose parents had died on or after 01.01.1988 while father of the petitioner passed away in the year 1985, therefore, the said policy is not attracted in his case. We are amused with such interpretation of the policy by the government functionaries. If at all a person has put in years long service, given his sweat for the department and died with his boots on, then the argument advanced by the respondent to deprive his children from the benefits of such policy is ridiculous and smacks of apartheid being practiced at the government level. We understand that such beneficial policy shall for all intents and purposes have retrospective effect.”*

(Emphasis is applied for sake of convenience)

21. Yet in another judgment passed in case of Muhammad Aslam Kalhoro Versus District & Sessions Judge, Larkana and others vide C.P. No.D-670 of 2023, a Division Bench of this Court, while sitting at Circuit Court, Larkana, of which one of us (Mohammad Salim Jassar, J.) was a member, while dealing with similar case, made following observations:

*“Needless to emphasize that a Government servant gives his blood and sweat to the concerned department by spending long and precious portion of his life in the shape of rendering his services, as such he deserves to be bestowed and provided promptly all his legal and legitimate rights including accommodating his family by providing*

*an opportunity of appointment to any of his sons against any suitable post on the basis of son-quota, particularly after his retirement and more particularly after his death, as there have been cases that after retirement / death of a particular government servant, his family has to face very painful, grave and critical situation due to retirement / death of the head of family, because undoubtedly the monthly pension received by a retired employee or his widow, as the case may be, particularly by one who pertains to lower staff (Class-IV), is on very lower side vis-à-vis the monthly emoluments being earned by him during his service tenure. In such a situation, it would be utmost necessary and mandatory for the concerned competent authority to appoint anyone amongst the sons of such employee immediately after his retirement / death against any suitable post."*

22. For the foregoing reasons, the listed contempt application is hereby converted into an application under Section 151, CPC and is allowed with directions to the respondents to appoint the petitioner to the post of Constable or to any other equivalent post. Since the petitioner is running from pillar to post for his right for a long time, it is expected that such exercise of issuing appointment order to the petitioner / applicant would be completed expeditiously; but, in any case not later than **two months** from the date of receipt of a copy of this Order under intimation to this Court. Learned Additional A.G. is directed to provide a certified copy of this order to the concerned authorities in the department for compliance. It may be clarified that if the needful is not done within the stipulated period, it shall be deemed to be defiance of the Court's order within the meaning of Article 204 of the Constitution of Islamic Republic of Pakistan, 1973. Office to assign proper number to the application as per institution.

23. Before parting with the order, it seems feasible to observe that it is expected from the respondents that they will not repeat the same excuse for not complying with the order passed by this Court on that there exist no vacancy of Constable against which the petitioner could be appointed, because it seems to be ridiculous and amounts to mockery that even after lapse of about 10 years still no vacancy of Constable accrued/existed in the police department.

**JUDGE**

**JUDGE**

Larkana  
Dated. 28-02-2024