

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 05 of 2024

(Shaheryar versus Province of Sindh and others)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **12.03.2024**

Date of decision : **12.03.2024**

Mr. Badaruddin Memon, Advocate for petitioner.

Mr. Liaquat Ali Shar, Additional Advocate General Sindh along with Inspector Muhammad Akhtar Pathan on behalf of DIGP Sukkur and Inspector Naveed Akbar on behalf of SSP Ghotki, who has filed comments on behalf of respondents No.3 and 4.

ORDER

Muhammad Iqbal Kalhoro, J. – By filing this petition, petitioner has sought directions to respondents for issuing him offer order for appointment to the post of Police Constable (BPS-5) in Sindh Police, for which he has qualified all the requisite tests. It is his case that pursuant to an advertisement, published through newspaper, he had applied for the post of Police Constable (BPS-5) in Police Department, Government of Sindh, in which he, after going through the complete process viz. written test and viva voce, was placed at serial No.152 of the merit list comprising 254 successful candidates. Thereafter, he underwent a medical fitness test, wherein he was declared physically fit. However, in the report about his credentials and character from the relevant quarters, he was shown involved in a criminal case: FIR No.18/2020, registered at Police Station Khambra U/S 353, 188, 269, 270 PPC and 5 of Gambling Act. The report, however, reflects that the said case was disposed of under 'C' class by the Judicial Magistrate-II, Ubauro vide order dated 08.05.2020. But the Sindh Police Recruitment Board, in its meeting held on 31.08.2022, recommended to reject his case for appointment as a Police Constable.

2. Learned Counsel, relying upon an order of this Court dated 20.12.2023, passed in C. P. No. D-969 of 2022 and D-1018 of 2022, has submitted that this case is not only identical on merits to the said cases but is also on better footing in that in this case, FIR against the petitioner was disposed of under 'C' class by the Magistrate concerned.

3. Learned AAG, though opposed this petition, but has conceded that this point has already been decided by the Court. Moreover, he has failed to bring on record a single case, in which petitioner has been convicted.

4. Relevant portion of the order dated 20.12.2023, as referred by learned Counsel for the petitioner, is given below:

“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 down 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.”

5. Today, comments have been filed by DIGP Sukkur and SSP Ghotki respectively. In the comments, same stance has been taken that Sindh Police Recruitment Board during scrutiny found an FIR, as above, registered against the petitioner, although disposed of under 'C' class by the Magistrate concerned, and rejected his case for appointment as a Police Constable without articulating reasons for taking such a decision. 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 the Sindh Police Recruitment Board form an opinion rejecting the candidature of petitioner simply on registration of a criminal case against him, which had already been disposed of under 'C' class in the investigation.

6. The Supreme Court in the case (**PLD 2010 Supreme Court 695**) Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan, seeking reinstatement in service after being acquitted from a murder case, but when denied by the bank, had approached the relevant tribunal and succeeded in obtaining an order in his favour, which was challenged before it, has explained the maxim *autrefois acquit* stating that ultimate acquittal in a criminal case exonerates accused person completely for all future purposes vis-à-vis the criminal charge against him. Concept of such maxim is embodied in Section 403 CrPC and protection guaranteed by Article 13(a) of the Constitution. Waiver or compounding in respect of an offence has the effect of purging the offender of the crime. It may be noted that the respondent in that case was acquitted of the murder charge on the basis of a compromise and payment of Badal-i-Sulh. The Supreme Court found the said acquittal as good as acquittal on merit and dismissed the appeal of bank against his reinstatement in service. The Supreme Court in a Suo Moto Case Re: the issue as to whether compounding of an offence under section 345 CrPC amounts to acquittal of the accused person or not (**PLD 2018 Supreme Court 703**) has further endorsed this view.

7. The Supreme Court in another case of Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department Peshawar (**1998 SCMR 1993**), holding that **all acquittals are certainly honourable**, has observed as under:

“We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be

noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals.”

8. In the present case, the case against the petitioner was disposed of at its early stage in investigation under ‘C’ class by the IO and it was accepted by the Magistrate concerned meaning thereby that there was no sufficient material against the petitioner to refer him to the Court for a trial even. It is also admitted position that this order was not challenged by the State, and save this case, no any case had ever been filed against the petitioner.

9. In view above, we do not find the decision of Sindh Police Recruitment Board rejecting the appointment of petitioner as a Police Constable sustainable in law and on correct understanding of ratio laid down in the aforesaid decisions. Consequently, the petition is **allowed** as prayed.

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Abdul Basit