

IN THE HIGH COURT OF SINDH, KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Adnan-ul-Karim Memon

1.	Const. P. 6135/2023	Abdul Ghani VS Province of Sindh & Others
2.	Const. P. 6552/2022	Abdul Ghani VS Province of Sindh & Others
3.	Const. P. 1365/2023	Asim Shah VS Province of Sindh & Others
4.	Const. P. 1505/2023	Muhammad Sameer VS Province of Sindh & Others
5.	Const. P. 3903/2023	Aamir Khan VS I.G of Police Sindh & Another
6.	Const. P. 3933/2023	Yousuf Saleem VS Province of Sindh & Others
7.	Const. P. 3957/2023	Muhammad Owais VS Province of Sindh & Others
8.	Const. P. 4294/2023	Danish & Others VS Province of Sindh & Others
9.	Const. P. 4295/2023	Bilal and Others VS Province of Sindh & Others
10.	Const. P. 4395/2023	Salman Khan VS Province of Sindh & Others
11.	Const. P. 4491/2023	Rasheed Alam VS Province of Sindh & Others
12.	Const. P. 4782/2023	Muhammad Mursaleen VS Province of Sindh & Others
13.	Const. P. 5409/2023	Muhammad Azeem VS Govt of Sindh & Others
14.	Const. P. 5410/2023	Shahzaib Ali VS Govt of Sindh & Others
15.	Const. P. 5730/2023	Muhammad Moiz Naveed and Another VS Province of Sindh & Others
16.	Const. P. 6182/2023	Zeeshan Ali VS Govt of Sindh & Others
17.	Const. P. 6431/2022	Asif Ali VS Prov. of Sindh & Others
18.	Const. P. 4969/2023	Shahzaib Jamshed VS Govt of Sindh & Others
19.	Const. P. 4957/2023	Waheed Ahmed VS Govt of Sindh & Others
20.	Const. P. 145/2024	Abdul Ghafoor Asadullah VS Prov. of Sindh & Others

For the Petitioners:

M/s. Khawaja Muhammad Azeem, Mateeullah Gondal, Zahid Ali Metlo, Naveed Ahmed Khan, Tajammul Hussain Lodhi, Nadir Khan Burdi, Fouzia Mushtaq, Humaira Baig, Advocates.

For the Respondents:

Through Mr. Ali Safdar Debar, Assistant Advocate General.
Mr. Mushtaq Abbasi, AIG (Legal), CPO Karachi, Sarwar Ali Shah, DSP (Legal) District East on behalf of SSP District East Karachi, Syed Mussadiq Amjad,

DSP (Legal) CPO Karachi, PI Altaf Ahmed, KPO Legal Branch on behalf of Additional I.G. Police Karachi, PI Syed Safdar Ali, CTD Sindh Karachi, Ghulam Nabi, DSP (Traffic), Muhammad Tufail, PDSP (Traffic) and Muhammad Ashraf, PDSP West Zone Karachi.

Date of hearing: 21.02.2024

Date of Order: 23.04.2024.

JUDGMENT

Muhammad Junaid Ghaffar, J: In all these Petitions a common legal question is involved; hence, they have been heard together and are being decided through this common Judgment. The Petitioners claim that they have qualified the written test as well as interview including physical fitness test for appointment as Police Constable in the Police department; however, the Respondents have refused to issue formal appointment orders. Learned Counsel for the Petitioners have jointly contended that though they were implicated in some criminal cases; however, those cases have either been disposed of in "C" Class by the concerned Courts, or compromised under Section 345(2) Cr.P.C or acquittal orders have been passed by the concerned trial Courts under Section 249-A and 265-K Cr.P.C; hence, they are otherwise entitled for such appointments. According to them, in a number of cases, this Court has already allowed the Petitions directing the Respondents to issue appointment orders. In support they have relied upon unreported cases of ***Abdullah Shah***¹, ***Majid Ali Memon***², ***Muhammad Danish Sidat***³, ***Asif Nawaz***⁴.

¹ order dated 23.02.2023 in C. P. No. D-4060 of 2020 (*Abdullah Shah V. Home Secretary and Others*),

² dated 04.05.2021 in CP No. D-992 of 2014 (*Majid Ali Memon V. SSP Shikarpur and Others*),

³ order dated 28.01.2021 CP No. D-6435 of 2020 (*Muhammad Danish Sidat V. Province of Sindh*)

⁴ order dated 17.01.2023 passed in C. P. No. D-1332 of 2022 (*Asif Nawaz V. Province of Sindh and Others*).

2. Learned AAG has opposed these Petitions on the ground that no right is created in favour of the Petitioners as their appointment is subject to decision by the Sindh Police Recruitment Committee and when their antecedents were checked, they were found involved in various criminal cases; hence, cannot be appointed in the Police department. As to the cases and Judgment passed by this Court as relied upon by the Petitioner's Counsel, he submits that all these Judgments are per incurium in view of recent Judgments of Hon'ble Supreme Court reported as ***National Bank of Pakistan***⁵ and ***Faraz Naveed***⁶.

3. Heard all the learned Counsel as well as learned Assistant Advocate General and perused the record. As per record the case of the petitioners is that they after initiation of a recruitment process by the Police Department participated in it and have qualified by passing the written test(s) as well as interview(s) and in some case even the physical fitness tests as well. Some of them have also been asked to join the training programs; however, instead of issuing them a formal appointment order, the Respondents have refused to do so on the ground that as per verification of Criminal Records of the Police Department they have been found nominated in criminal cases which are either pending or even have been decided finally one way or the other; however, as per the decision of the Recruitment Committee formed in terms of Sindh Police Recruitment Policy, 2022, they are not eligible for such an appointment on this ground. It is the case of the Petitioners that in all such criminal cases they have been acquitted in one form or the other, either by way of disposal of the Police Report filed under Section 173 Cr.P.C. as "C" Class; or by way of a compromise recorded in terms of Section 345(2) Cr.P.C. or by way of an acquittal in terms of section 249-A Cr.P.C or 265-K

⁵ President National Bank of Pakistan and others Vs. Wasaq Ahmed Khan (2023 S C M R 766)

⁶ Faraz Naveed Vs. District Police Officer Gujrat and another (2022 S C M R 1770).

Cr.P.C. They have rested their case on various orders / judgments of this Court as noted above and so also on section 15 of the Sindh Civil Servants Act, 1973 ("Act"). While rebutting this, learned AAG has relied upon two Supreme Court Judgments in the case of National Bank and Faraz Naveed (Supra) and has contended that the judgments of this Court as relied upon are per-incuriam in view of the Supreme Court judgments; hence, they are of no relevance.

4. Before proceeding further and as to whether the judgments of this Court in identical facts as relied upon on behalf of the Petitioners are per-incuriam or not, it would be relevant to examine Section 15 of the Act, which provides that no person convicted for an offence involving "*moral turpitude*" shall, unless Government otherwise direct, be appointed to a Civil Service or post. Moral turpitude has not been defined in the Act; however, the literal meaning as well as the interpretation arrived at by the Courts is that it is a criminal conviction for a crime that involves dishonesty, fraud or a morally reprehensive behavior. The expression Moral Turpitude has been explained in in Words and Phrases, Permanent Edition 27-A, and followed in Ghulam Hussain⁷ and states that in determining whether crime is one involving "moral Turpitude" the test is whether the act denounced by the statute offends the generally accepted moral code of mankind. It further states that "Moral turpitude" is a vague term, and its meaning depends to some extent on the state of public morals; it is anything that is done contrary to justice, honesty, principle, or good morals; and act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man; it implies something immoral in itself, regardless of fact whether it is punishable by law." In

⁷ Ghulam Hussain v Chairman P.O.F. Board (2002 SCMR 1691)

Legal Terms and Phrases (Judicially defined) by M Ilyas Khan Advocate it is explained as "The term moral turpitude is not defined anywhere but in general parlance it connotes anything done against justice, honesty, modesty or 'good morals. It is deprivation of character, and devoid of morality." And finally in Ramantha Aiyer's Law Lexicon "The term 'moral turpitude' is defined as 'anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule or right and duty between man and man'." It is also of relevance that not all criminal convictions fall under moral turpitude. Moreover, the provision of Section 15 *ibid* is a general provision applicable to all types of appointments as Civil Servants; and it is not specifically in relation to appointments in Police Department. Therefore, can a person who is a convict for an offence which does not fall within the contemplation of "moral turpitude"; will still be qualified to be appointed as a Civil Servant in terms of Section 15 of the Act? And our answer would be a 'No'. Provision of Section 15 *ibid* 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 of time 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 as above. In our considered view, Section 15 of the Act cannot be read or interpreted in isolation as it has a very meaningful and genuine nexus with the proviso to Section 6(3)

ibid, which rests the entire case of an employee onto his *good character* and *antecedents* being satisfactory in the opinion of the *appointing authority*. Therefore, the exception in Section 15 ibid is not absolute as if even someone has crossed the threshold of this provision, his appointment will still be subject to the discretion of the appointing authority insofar as his antecedents and good character is concerned. Permitting someone into an employment depends entirely on discretion of the Employer, whereas, no right is created by taking shelter under Section 15 ibid. For example, if a person nominated in some crime is not qualified for a private employment, can it be said that he is fit enough for a Government Employment at the same time. Similarly, can a person who is a convict (other than in moral turpitude) be employed as a guard at a private person's house. If not, then he shall also be disentitled for any Government appointment. At the same time, we are cognizant of the fact that being nominated in a crime doesn't automatically disqualify someone from holding a government job. However, the severity of the crime and the alleged involvement will determine whether someone with a criminal record can be appointed to a government position. This exercise has to be carried out best by the appointing authority and not the Court as each and every case needs to be evaluated based on the relevant facts.

5. Coming to the cases cited on behalf of the Petitioners it would suffice to observe that none of the cases have dealt with the proviso to Section 6(3) of the Act; nor the two Supreme Court judgments in the case of *National Bank of Pakistan* and *Faraz Naveed (Supra)* cited by learned AAG. However, all being judgments of learned Division Benches of this Court are a binding precedent, and can only be distinguished or are not required to be followed if they are otherwise per-incuriam; hence, all require a brief examination.

6. The first of such cases is by a learned Division Bench at Circuit Court, Larkana in the case of Majid Ali Memon (Supra). In that case the Petitioner had approached the Court upon refusal by the Respondents to appoint him as a Constable on the ground that he was nominated in an FIR registered under Sections 452, 114, 337-A(i), 337-F(i), 148 & 149 PPC. Perusal of the said judgment reflects that it is entirely premised on Section 15 of the Act, inasmuch as the said person had been acquitted under Section 249-A Cr.P.C., and no case was pending against him, whereas, the Court was of the view that the incident was a private affair. In that case the Respondents had relied upon an earlier judgment of Circuit Court, Larkana Bench dated 18.3.2013 in CP No.D-2095 of 2011 against which leave to appeal was also refused by the Supreme Court vide order dated 11.6.2012 in Civil Petition to Leave No.165-K/2012. The Court had distinguished the same on facts as the said person was found involved in numerous case as against the Petitioner who had only one case in which he had been acquitted by the trial Court. With respect, this judgment has not dilated upon the proviso to section 6(3) *ibid* whereas the Supreme Court judgments as above were never cited before it.

7. The second judgment is by learned Division Bench of this Court at Sukkur in the case of Asif Nawaz (Supra), and on perusal of the said judgment it reflects that the same is solely based on the principle of accrual of a vested right by placing reliance on the case of Inspector General of Police, Quetta⁸, whereas, it has neither discussed the relevant law; nor the two Supreme Court judgments as above were cited before the Bench.

⁸ Inspector General of Police, Quetta v Fida Muhammad (2022 SCMR 1583)

8. The third judgment is by a learned Division Bench of this Court at Karachi in the case of Muhammad Danish Sidat (Supra), wherein the petition was disposed of with certain directions to scrutinize the candidature of the petitioner for the post of Assistant Sub-Inspector (BPS-09) and if found fit in all respects then his candidature was to be decided in accordance with law. With respect this is not a binding decision and again the Supreme Court judgments as relied upon by AAG were never cited before the Court.

9. In addition, there are two other judgments on similar footing but have not been cited on behalf of the Petitioners. First one is by Division Bench at Circuit Court, Hyderabad in the case of Muhammad Irshad Khan⁹, wherein again the Bench was of the view that since there was no conviction in field; hence, Section 15 of the Act puts no bar on such appointment. In that case the FIR against the Petitioner was disposed of by the concerned Magistrate under cancelled ("C") Class. However, once again the two Supreme Court Judgments as above were never cited before the Bench.

10. The second one is a Judgment of a learned Division Bench at Sukkur in the case of Mehmood Khan¹⁰. This is the only case wherein the two Supreme Court judgment as above were cited before the Court; however, the same have neither been discussed; nor distinguished by the Bench. The Court came to the conclusion that since the Petitioners had been acquitted on merits; hence, there is no impediment in their appointment in the Police Department.

11. As against these judgment there is another judgment of a Division Bench at Karachi, (authored by one of us, namely

⁹ dated 19.3.2024 in CP No.D-78 of 2024

¹⁰ Mehmood Khan versus Province of Sindh dated 20.12.2023 in CP No.D-969 of 2022

Adnan-ul-Karim Memon, J) in the case of **Ali Haider**¹¹. In this case it was held that the appointment of the petitioner as Police Constables was subject to their character verification wherein they have been found involved in criminal cases and not withstanding their acquittals for appointments in police force it is expected that persons having their character above board, free from any moral stigma, are to be inducted. It was further held that verification of good character and antecedents is a condition precedent for appointment in police force and in absence whereof, prima facie, the appointment could not be made. It was finally concluded that this Court cannot sit in appeal to give a clean chit to a person who was tried in criminal cases and even if he has been acquitted, it is for the Recruitment Committee to evaluate and reach a final conclusion. Finally, on these grounds the petitions were dismissed.

12. After going through the above judgments of the various Benches of this Court as cited on behalf of the Petitioners, we can safely say that insofar as the binding effect of these judgments is concerned, they are *per-incuriam* inasmuch as they have neither dilated upon the proviso to Section 6(3) of the Act; nor have made any attempt to distinguish the two judgments of Supreme Court in the case of *National Bank* and *Faraz Naveed (Supra)*. Lastly, the judgment in *Ali Haider (Supra)* authored by one of us (Adnan-ul-Karim.J) giving a contrary view has not been cited or distinguished in these judgment. Per settled law, a judgment will be *per-incuriam* which has been rendered without considering the relevant provision of law or the legal decision on the point of law¹². A *per incuriam* decision even of the highest court, does not bind any other Court and it matters little that such Court itself be at the

¹¹ order dated 09.03.2023 in C. P. No. D-5703 of 2022 (*Ali Haider V. Province of Sindh*),

¹² *Nazaz Ali (Nizar Ali) v Karachi Building Control Authority* (2002 CLC 1464)

lowest rung in the hierarchy of Courts¹³. The decision of a Court becomes per incuriam when it is rendered in ignorance of a statute or a rule having the force of statute¹⁴. It is also per incuriam where a case or statute had not been brought to the Courts attention and the Court gave the decision in ignorance or forgetfulness of the existence of the case or statute¹⁵.

13. Now we shall discuss the two Supreme Court judgments cited by learned AAG. 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 joining. The Bank appealed to the Supreme Court and after examination of the facts as well as 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 levelled 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 same sanctity cannot be accorded to an acquittal at 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 recording of evidence. The entire focus of 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.

¹³ Abdul Razzak v The Collector of Customs (1995 CLC 1453)

¹⁴ Jameel Qadir v Government of Baluchistan (2023 SCMR 1919)

¹⁵ Ibid

14. The second case of Faraz Naveed (Supra) in fact pertains to the Police Department and is more squarely applicable to the cases in hand. In that case the petitioner was appointed as ASI in Police Department and was thereafter indicted in an FIR and was awarded death sentence; however, his Criminal Appeal was allowed by Lahore High Court and he was acquitted on benefit of 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 thread bare 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 benefit of doubt or some other technical reasons, there is no bar for initiation of departmental enquiry and it is the prerogative; rather an onerous responsibility of the employer to consider nature of offence 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 in nature. After placing reliance on a judgment of the Indian Supreme Court in the case of Union of India v Methu Meda¹⁶ the Court observed that police force is a disciplined force; that 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

¹⁶ (2022)1 SCC1 & MANU/SC/0797/2021 (Appeal No.6238 of 2021)

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 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 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 true 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 that any of these persons may become eligible for an appointment if the Committee so decides and recommend. The said Committee can always examine the contents of the FIR, nature of offence and behavior of the accused towards Courts and law and so on and so forth. The Courts showing restraint shall let the concerned Authority to exercise its discretion and be also responsible for such appointment, if any. The Supreme Court in Faraz Naveed (Supra) has referred to a passage from Methu's Case (Supra) which is worth reading and is as under;

"21. In view of the aforesaid, it is clear the respondent who wishes to join the police force must be a person of utmost rectitude and have impeccable character and integrity. A person having criminal antecedents would not be fit in this category. The employer is having right to consider the nature of acquittal or decide until he is completely exonerated because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee and the decision of the Committee would be final unless mala fide. In the case of Pradeep Kumar (supra), this Court has taken the same view, as reiterated in the case of Mehar Singh (supra). The same view has again been reiterated by this Court in the case of Raj Kumar (supra).

22. As discussed hereinabove, the law is well settled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate

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.

Dated: 23.04.2024

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Arshad/