

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Constitutional Petition No.D-735 of 2024**

along with

Constitutional Petition No.D-1383 of 2024

Constitutional Petition No.D-1490 of 2024

**Present:**

**Mr. Justice Muhammad Saleem Jessar**

**Mr. Justice Zulfiqar Ali Sangi**

Petitioner Mushahid Hussain in C.P No.D-735 of 2024	:	through Mr. Shabbir Ali Bozdar, Advocate
Petitioner Shahid Ali in C.P No.D-1383 of 2024	:	through Mr. Mansoor Hussain Maitlo, Advocate
Petitioner Aamir Ali in C.P No.D-1490 of 2024	:	through Mr. Shabbir Ali Bozdar, Advocate
Government of Sindh & Others	:	through Mr. Zulfiqar Ali Naich, A.A.G, along with Inspector Ghulam Shabbir on behalf of SSP Ghotki, Inspector Syed Aftab Ahmed Shah, P.S Ubauro & Inspector Mir Hashmat Ali on behalf of SSP Naushero Feroze
Date of Hearing	:	16.12.2024
Date of Judgment	:	08.01.2025

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**JUDGMENT**

**MUHAMMAD SALEEM JESSAR. J-** Through this common judgment, we intend to dispose of all these three petitions involving same legal point whereby petitioners are seeking their respective appointment against the post of Police Constable/Driver Police Constable in Sindh Police Department.

2. Brief facts, relevant for disposal of these Constitutional Petitions, are; that through advertisements published in various newspapers on different dates, the respondents invited applications from desiring candidates for the posts of Police Constable/Driver Police Constable (BPS-5/7) in Sindh Police Department. The petitioners, having requisite qualifications, applied for the said posts, participated in written tests and were held declared successful. Subsequently, they also passed physical fitness test and viva voce. The grievance of the petitioners is that despite fulfilling all necessary criteria, the respondents, after keeping them on false hopes, denied their rightful appointments solely due to their alleged prior involvement in criminal cases, although the petitioners had asserted that they had been acquitted from alleged charge in all those cases. In such circumstances, the petitioners have filed present petitions.

3. It seems that Mushahid Hussain, the petitioner in CP No.D-735/2024, passed written test, physical fitness test as well as viva voce and qualified for appointment against the post of Police Constable but his appointment was declined by the respondents on the ground that during recruitment process he was found involved in criminal case arising out of FIR No.258/2022, registered at P.S. Ubauro, District Ghotki, for offences under Sections 3/4 of the Prohibition (Enforcement of Hadd) Order, 1979, and Section 353 of the Pakistan Penal Code. However, after due trial, he was acquitted by learned Judicial Magistrate-1, Ubauro (the trial Court) vide judgment dated 11.11.2023, a copy whereof is placed on record as Annexure E-1 at page 45 of the file. Similarly, Aamir Ali Shar, Petitioner in CP No.D-1490 of 2024, successfully passed the written test, physical fitness test, and viva voce for the post of Driver Police Constable (BPS-7). He, along with 54 other candidates, was approved for appointment to the post of Driver Police Constable vide a consolidated letter dated 08.06.2021 issued by the then SSP Khairpur Mirs. Despite this, he was deprived of his appointment on the grounds that, during an inquiry into his character and antecedents, he was found to be involved in FIR No.40/2021, registered with P.S. Bozdar Wada, District Khairpur Mirs, under Sections 506/2, 337-A(i), 337-F(i), 148, and 149 of the PPC. Therefore, vide letter dated 12.9.2024 respondent No.2 withdrew his recommendation. However, in the said criminal case, petitioner Aamir Ali had already been acquitted of the alleged charge by the trial Court vide judgment dated 09.03.2022, copy thereof is also placed on record. So for as case of Shahid Ali

Khoso, petitioner in CP No.D-1383/2024, is concerned, he was held successful in the written test, physical fitness test as well as viva voce and consequently, the respondents issued an offer letter to the petitioner for his appointment as Police Constable. However, his recommendation for appointment was later on withdrawn by the Inspector General of Police, Karachi, vide letter dated 05.09.2024 (Annexure "C" in the petition, on the ground that it was revealed that he was involved in FIR No.47/2022, registered at P.S. Phul for offences under Sections 452, 427, 114, 337-H(ii), 147, 148, 149, and 504 PPC.

4. Having become aggrieved by such denial to their respective appointments, the petitioners have filed instant constitutional petitions.

5. We have heard learned counsel for the petitioners as well as learned Assistant Advocate General and perused the material brought before us on record.

6. Learned counsel for the petitioners argued that despite informing the respondents about the petitioners' acquittals in the aforementioned criminal cases, the respondents failed to issue appointment orders to the petitioners. Learned counsel emphasized that it is now a well-established principle of law that mere involvement of a candidate in a criminal case, unless he is convicted and sentenced, does not deprive him from the right to be appointed to a post for which he is otherwise eligible, having passed the requisite tests and interview. In support of their arguments, learned counsel have relied upon the case of Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan (PLD 2010 Supreme Court 695), an unreported order passed by Hon'ble Supreme Court in Civil Petitions No.81-K and 82-K of 2024, as well as orders passed by this Court in identical matters/unreported cases viz. CP No.D-1018 of 2022 re: Muhammad Saleem Khan and others v. P.O Sindh and others, CP No.D- 1049 of 2019 re: Khalid Hussain v. P.O Sindh and others.

7. Learned Assistant Advocate General filed statement of respondent No.3 and order of this Court passed in CP No.D-4667 of 2023 under cover of his statement which were taken on record. He contended that the petitioners are not entitled to be appointed in Police Force having background of their involvement in criminal cases, therefore, these petitions are liable to be dismissed.

8. Admittedly the petitioners were held successful in their written test, physical fitness test as well as viva voce but only due to their involvement in criminal cases, despite they were acquitted of the charges by the competent Court of law in those cases, the respondents withdrawn their recommendation and denied their appointment in Sindh Police Department.

9. It seems that the petitioners in C.P. No.D-1383 of 2024 and C.P. No.D-1490 of 2024 the petitioners / accused were released consequent upon compromise having arrived at between parties, whereas petitioner in C.P. No. D-735 of 2024 was acquitted consequent upon grant of application under section 249-A Cr. P.C. which was filed after recording evidence of the complainant in that case. However, the case was discussed elaborately and the petitioner was acquitted by extending him benefit of doubt and concluding that there was no probability of the accused / petitioner of being convicted.

10. In similar circumstances, the apex Court has laid down a dictum that acquittal of whatsoever nature in a criminal case, whether on the basis of a compromise having arrived at between the parties or where the accused has been extended benefit of doubt, exonerates the accused completely for all future purposes and all such acquittals have the effect of purging the offender of the crime and are **honourable acquittals**.

11. In this context, reference can be made to the case of *Dr. Muhammad Islam vs. Government of NWFP through Secretary Food, Agricultural, Livestock and Cooperative Department, Peshawar and 2 others (1998 SCMR 1993)*, wherein while dealing with such situation, Honourable Supreme Court held as under:

*"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."*

It was further held by Honourable Supreme Court:

*"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 was further held:

*“Even in the cases where benefit of doubt has been given to the accused, it cannot be said that the charge has been established by the prosecution. The accused are to be treated as innocent unless it is proved on the basis of best possible evidence that they are connected with the Commission of the crime and as such, deserve to be convicted to meet the ends of justice. The doubt itself shall destroy the very basis of the prosecution case. In this view of the matter, the accused shall be deemed to have honourably been acquitted even where the benefit of doubt has been extended to them. In case of Mian Muhammad Shafa v. Secretary to Government of the Punjab, Population Welfare Programme, Lahore and another (1994 PLC (C.S.) 693), following observations were made:--*

*"There is hardly any ambiguity in these provisions and they do not present any difficulty. We are in no doubt that the provisions of clause (a) are attracted by the facts on the ground that the appellant was acquitted of the charge against him. Although, the department claims that this was the result of benefit of doubt, we would hold that the acquittal is honourable within the meaning of this rule. As a matter of fact, all acquittals are honourable and the expression 'honourable acquittals' occurring in clause (a) seems to be superfluous and redundant. It is one of the most valuable principles of criminal jurisprudence that for a judgment of conviction it is the duty of the prosecution to establish its case beyond all reasonable doubt. If it fails to do so, the accused will be entitled to acquittal and such acquittal will be honourable, even if it is the result of a benefit of doubt. The expression 'benefit of doubt' is only suggestive of the fact that the prosecution has failed to exonerate itself of the duty of proving its case beyond all reasonable doubt. In the present case, therefore, the appellant's acquittal of the charge of misconduct and his consequential reinstatement in service entitled him to full pay and remuneration of the entire period from 6-10-1980 to 12-2-1986 under F.R. 54(a) of the Rules. We hold that the provisions of F.R. 54(b) are not relevant and that they could not have been pressed into service by the Department in deciding the matter...."*

*“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.”*

12. In the case of **CHAIRMAN AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN and another Vs. MUMTAZ KHAN**, reported in **PLD 2010 SC 695**, it was held by Honourable Supreme Court as under:

*“10. As regards the submission made by the learned counsel for the appellants based upon the issue of propriety of reinstating in service a person who, by virtue of compounding of an offence of murder, is a self-condemned murderer we may observe that we have pondered over the said issue from diverse angles and have not felt persuaded to agree with the learned counsel for the appellants. Experience shows that it is not always that a compromise is entered into by an accused person on the basis of admission of guilt by him and in many cases of false implication or spreading the net wide by the complainant party accused persons compound the offence only to get rid of the case and to save themselves from the hassle or trouble of getting themselves acquitted from Courts of law after arduous, expensive and long legal battles. Even in the present case the respondent and his brother were accused of launching a joint assault upon the deceased upon the bidding and command of their father and before the learned trial Court*

*the respondent's brother had maintained in unequivocal terms that he alone had murdered the deceased and the respondent and their father had falsely been implicated in this case. Be that as it may, an ultimate acquittal in a criminal case exonerates the accused person completely for all future purpose vis-à-vis. the criminal charge against him as is evident from the concept of autrefois acquit embodied in section 403, Cr.P.C. and the protection guaranteed by Article 13(a) of the Constitution of Islamic Republic of Pakistan, 1973 and, according to our humble understanding of the Islamic jurisprudence, Afw (waiver) of Sulh (compounding) in respect of an offence has the effect of purging the offender of the crime. In this backdrop we have found it difficult as well as imprudent to lay it down as a general rule that compounding of an offence invariably amounts to admission of guilt on the part of the accused person or that an acquittal earned through such compounding may have ramifications qua all spheres of activity of the acquitted person's life, including his service or employment, beyond the criminal case against him. We may reiterate that in the case of Dr. Muhammad Islam (supra) this Court had categorically observed that "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". The sway of those observations made by this Court would surely also encompass an acquittal obtained on the basis of compounding of the offence. It is admitted at all hands that no allegation had been levelled against the respondent in the present case regarding any illegality, irregularity or impropriety committed by him in relation to his service and his acquittal in the case of murder had removed the only blemish cast upon him. His conviction in the case of murder was the only ground on which he had been removed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service."*

While discussing the case of Dr. Mohammad Islam (supra), it was further held:

*"who was 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, came before the Supreme Court in an appeal filed by the bank against such order. The Supreme Court has explained the maxim autrefois acquit stating that ultimate acquittal in a criminal case exonerates accused person completely for all future purpose vis-à-vis the criminal charge against him. Concept of such maxim is embodied in Section 403 Cr.P.C 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 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".*

It was further held:

*"8. The provisions of the first proviso to subsection (1) of section 338-E, P.P.C. clearly contemplate acquittal of an accused person on the basis of compounding of an offence by invoking the provisions of section 310, P.P.C. and the effect of such compounding has also been*

*clarified in most explicit terms by the provisions of subsection (6) of section 345, Cr.P.C. in the following words:--*

*"The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded."*

*9. The legal provision mentioned above leave no ambiguity or room for doubt that compounding of an offence of murder upon payment of Badal-i-Sulh is not a result of payment of Diyat which is a form of punishment and that such compounding of the offence leads to nothing but an acquittal of the accused person. It has already been clarified by this Court in the 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 as follows:--*

*"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."*

*The said precedent case also involved a question of reinstatement in service of an accused person implicated in a criminal case who had been acquitted by the criminal Court and this Court had declared that an acquittal had no shades and there was no concept of Honourable or dishonourable acquittals. It had specifically been noted by this Court in that case that there could also be cases involving acquittals on the basis of compromise between the parties and after raising a query regarding the status of such acquittals this Court had hastened to add that "All acquittals are certainly honourable". If that be the case then the respondent in the present case could not be stigmatized or penalized on account of his acquittal on the basis of compromise. In view of the discussion made above and also in view of the novel situation presented by this case the precedent cases cited by the learned counsel for the appellants have been found by us to be missing the mark, if not irrelevant to the controversy in hand."*

13. Three Division Benches of this Court, sitting at Sukkur Bench, while following the above dictum laid down by Honourable Supreme Court in the cases of Dr. Mohammad Islam (supra) and **CHAIRMAN AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN** (supra), passed similar judgments in C.P. Nos.D-969 and D-1018 of 2022, C.P.D-601 of 2023 and C.P. No.D-1049 of 2019.

14. Recently, on 22.10.2024, Honourable Supreme Court, while deciding Civil Petitions No.81-K and 82-K of 2024 took similar view. In the said case the petitioners qualified in written test and interview and were recommended for appointment but on calling their character antecedents, it was surfaced that they were found involved in criminal cases, hence their appointment was

denied despite their acquittal in those criminal cases by the competent Court of law which was challenged before this Court in the writ petition which was allowed and the order of this Court was assailed by the respondent/government before Honourable Supreme Court. During course of arguments, Additional Advocate General, relied upon paragraph 4.1.18 of the Revised Sindh Police Recruitment Policy, 2022 ('policy of 2022) in support of his contention that a convicted candidate was not eligible to be offered appointment irrespective of the nature of the offence and the period of sentence. However, the Apex Court repelled such plea by holding as under:

*"We have heard the learned Additional Advocate General, Sindh at great length. He has drawn our attention to paragraph 4.1.18 of the Revised Sindh Police Recruitment Policy, 2022 (Policy of 2022) in support of his contention that a convicted candidate was not eligible to be offered appointment irrespective of the nature of offence and the period of sentence. In response to our query, the learned Additional Advocate General could not show any other regulation, policy or instruction which may have prescribed disqualification on the ground of mere registration of a criminal case which had ultimately led to acquittal of an accused. The paragraph 4.1.18 of the policy of 2022 explicitly provides that "a candidate who is found to have been convicted in a Court of law in any criminal case, shall not be offered appointment irrespective of the nature of the offence and the period of sentence. A plain reading of the said provision clearly shows that the disqualification remains effective till subsistence of conviction. By no stretch of the imagination, the paragraph can be construed as extending the disqualification to a candidate who has been acquitted upon conclusion of a criminal trial. The High Court has correctly interpreted the provisions of policy of 2022 and section 15 of the Sindh Civil Servants Act, 1973. The learned Additional Advocate General was not able to persuade us that the impugned judgment suffers from any legal infirmity requiring our interference. In the circumstances, leave is refused and the petitions are accordingly allowed."*

15. After a thorough examination of the Sindh Civil Servants Act, 1973, along with the Rules formulated thereunder, the Police Rules 1974, and the Disciplinary Rules, 1988, we find no provision of law that prohibits an individual from being appointed to the Civil or Police Service solely due to the pendency of a criminal case, especially when the candidate has been acquitted of all the charges. In view of dictum laid down by Honourable Supreme, as detailed above, it can safely be held that mere pendency of a criminal case does not serve as a legal ground for barring an individual from joining public service, particularly when there has been no conviction. In this regard, Section 15 of the Sindh Civil Servants Act, 1973 specifically addresses the issue of appointment in cases of conviction. It clearly stipulates that no person convicted of an offense involving moral turpitude shall be appointed to a civil service or post, unless directed otherwise by the government. It is important to



emphasize that this provision is not applicable in present case, as the petitioners in instant petitions have been acquitted of all the charges. Therefore, the criteria outlined in Section 15 does not impose any restriction on the appointment of the petitioners.

16. In view of above circumstances, coupled with the dicta laid down by Hon'ble Apex Court in the cases referred to hereinabove as well as unreported case laws relied upon by learned counsel for the petitioners, we are of the considered opinion that the petitioners having passed written test, physical fitness test as well as viva voce, once recommended by the respondents for appointment, could not have been disqualified and deprived off from getting their right of appointment against the posts of Police Constable/Driver Police Constable merely on account of their involvement in criminal cases, despite the fact that they were acquitted in those cases by the competent Court of law.

17. We deem it proper to point out at this juncture that, of course, there are certain case-law of the Superior Courts in which different view has been taken. However, in none of the judgments of Honourable Supreme Court, pronounced after the cases of *Dr. Mohammad Islam* (supra) and the case of *Chairman Agricultural Development Bank of Pakistan* (supra) the dictum laid down in abovesaid two cases, particularly, "*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.*" has been declared to be '*not a good law*' by any Bench of Honourable Supreme Court, competent to make such declaration.

18. Even in the judgment delivered by a three members' Bench of Honourable Supreme Court in an unreported case bearing No.CIVIL PETITION No. 3122 OF 2020 in the case of *Faraz Naveed Vs. District Police Officer Gujrat and another*, although the case of Dr.Muhammad Islam (supra), was also discussed, however, Full Bench of Honourable Supreme Court did not hold that the law enunciated in said case by Supreme Court **is not a good law but has only distinguished the said judgment**, therefore it is clear that the judgment passed by the Apex Court in the case Dr. Mohammad Islam, supra, still holds field and so also the judgment passed in the case of *Chairman Agricultural Development Bank of Pakistan* (supra). While distinguishing the judgment, it was held as under:

*"The reading of judgment in the case of Dr. Muhammad Islam, (supra) unambiguously leads to the conclusion that neither in this case any*

*charge was framed nor any conviction was recorded but in the instant case a serious charge of murder was proved in the Anti-Terrorism Court and the petitioner was convicted for death penalty however in appeal, he was extended benefit of doubt which resulted his acquittal."*

19. It seems that in the case of Dr. Mohammad Islam (supra) 'all acquittals' have been declared to be 'honourable acquittals' by Honourable Supreme Court. Not only this, but it has specifically been held, "*There can be no acquittals, which may be said to be dishonourable.*" In this view of the matter, we do not see any plausible reason and justification to exclude the 'acquittal' under Section 249-A Cr. P.C. and 265-K Cr. P.C. from the ambit of aforesaid dictum of Honourable Supreme Court.

20. The upshot of above discussion is that the petitioners have succeeded in making out a case for grant of instant petitions. Accordingly, and in view of above legal position, we are inclined to allow all these three petitions as prayed and declare that the action of the respondents of declining appointments of the petitioners due to their alleged prior involvement in criminal cases in which they were subsequently acquitted, is not sustainable in the eye of law. All the three petitioners, who otherwise had made out a case for their appointment, are eligible/entitled for their appointment. Consequently, the respondents are directed to issue appointment orders in favour of three petitioners within 30 days' time from the date of this Judgment.

21. Office is directed to place a signed copy of this judgment in the connected petitions. A copy of judgment shall be provided to the office of Addl. Advocate General, Sindh, for correspondence and compliance.

**JUDGE**

**JUDGE**

**Sukkur**

Approved for reporting

Dated: 08<sup>th</sup> January, 2025