

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-5887 of 2024

(*Sajjad Anwar Sunny & others v Province of Sindh & others*)

Date

Order with signature of Judge

Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul_Karim Memon

Date of hearing and Order: 10.12.2024

Mr. G. M. Bhutto advocate for the Petitioners

J U D G M E N T

Muhammad Karim Khan Agha,J: The petitioners humbly request this court to:

- 1. Implement the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002 Amendment Act, 2019) regarding transfers, postings, and jurisdiction of police officers, including the petitioners.*
- 2. Comply with the provisions of the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002 (Amendment Act 2019)) and relevant rules and regulations, including the Police Rules, 1934, Sindh Civil Servants Act, 1973, and Sindh Civil Servants (Probation, confirmation & Seniority) Rules, 1975.*
- 3. Treat the petitioners similarly to other police inspectors as per the letter No. 17206-12/I-II/list-I, dated 19.09.2024.*
- 4. Prepare and issue the seniority list of Inspectors (Investigation) BPS-16 in accordance with the Police Rules, 1934, Sindh Civil Servants Act, 1973, and relevant laws, considering the petitioners' appointments in the Executive Cadre.*
- 5. Declare the petitioners as Gazetted (Class-II) in accordance with the Sindh Civil Servant Rules and relevant government orders.*

2. Facts of the case are that the petitioners, directly recruited as Inspectors (Investigation) BPS-16 by the SPSC in 2018, have completed their probationary period and training courses. They submit that the respondents' orders dated 23.01.2024 and 24.01.2024 regarding their only posting in Investigation Branch and not in operational Branch Karachi Police violate the 2019 Amendment Act, the Police Rules 1934, and the Sindh Civil Servants Act 1973 and seniority rules framed thereunder. They also claim that they should be considered Gazetted Class-II officers and they be allowed to be posted in Executive Branch as they are liable to serve at any time in any branch, division, bureau and section in terms of the judgment passed by the Supreme Court in the case of *Gul Hassan Jatoi and others v. Faqir Muhammad Jatoi, 2016 PLC (CS) 1102*. The petitioners have filed representations but have not received any response.

3. Learned counsel for the petitioners submitted that the petitioners are Sindh Police Inspectors (Investigation) BPS-16, directly recruited by the SPSC in 2018. He added that they have completed their probationary period and relevant training courses; that the respondents have decided to maintain the seniority of Inspectors (Investigation) in the Executive Cadre

of Sindh Police, in compliance with the Supreme Court's judgment in *Gul Hassan Jatoi and others v. Faqir Muhammad Jatoi*, **2016 PLC (CS) 1102** and relevant provisions of the Police Rules 1934, however, that decision was changed and decided to limit their posting in the Investigation Branch with certain conditions vide letter dated 19.09.2024. Learned counsel argued that the petitioners are entitled to their constitutional rights, including fair treatment in transfer and posting. He argued that the respondents' actions, particularly the issuance of impugned letters that violate the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002 Amendment Act, 2019) and relevant rules, are arbitrary and illegal. He requests this court to implement the 2019 Amendment Act, comply with relevant laws, treat them equally with other Inspectors, issue a seniority list, and declare them as Gazetted Class-II officers. The petitioner's lawyer argued that the notification/order issued by the respondents is illegal and violates the Constitution and the Police Order 2002 (Amendment) Act 2019. The lawyer contended that the DIGP/Establishment Sindh does not have the authority to nullify the order dated 8.2.2023 issued by the IGP Sindh without government approval. The lawyer relied on the *Gul Hassan Jatoi case* and requested this court to allow the petition.

4. We have heard learned counsel for the petitioners on the maintainability of the petition and have perused the material available on record with his assistance.

5. The question raised in the petition is whether the officers of Investigation Wing of the Police Department Sindh can be transferred to the Executive Branch of the Police Department under the Police Act, 1861, read with Police Rules 1934 in terms of the ratio of the judgment rendered by the Supreme Court in the case of *Gul Hassan Jatoi supra*.

6. The answer to this question lies in the judgment rendered by the Supreme Court of Pakistan in the case of *Gul Hassan case*, where the Supreme Court has held the entire police establishment under a Provincial Government is one police force. The scheme of the Police Act, of 1861, which defines "police" under section 1 to include all persons who shall be enrolled under this Act. The police force is composed of (a) police officers and (b) police-men; both formally enrolled and operating under one command. Section 4 provides that the administration of the police throughout a general police district shall be vested in the Inspector-General of Police, Deputy Inspectors-General, and Assistant Inspectors General as the Provincial Government shall deem fit. Section 7 of the Act provides that subject to such rules as the Provincial Government may from time to time make under this Act, the Inspector-General, Deputy

Inspectors-General, Assistant Inspectors General, and District Superintendents of Police may at any time dismiss, suspend or reduce any police-officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same.

7. The appointments and enrollments of the police personnel are regulated by Rule 12 of the Police Rules, 1934, which deals with three different sets of the recruitment process and there is a difference in the training courses of the police personnel. Under the Police Rules, the seniority of the Constable and Head Constable is maintained in the District, whereas the seniority of ASI and SI is maintained by the range DIG. The seniority of the Inspector in Police is maintained by the Central Police office. The training and examination of the Executive Unit are provided in the Police Rules.

8. In principle, under the police rules, the entry point of all the police personnel in executive police is common. They have a common recruitment process, police training, and practical training as prescribed under the rules and once these training after their appointments are completed, they are transferred to the different establishments under the rules.

9. We have examined the law on the subject in the light of the judgment rendered by the Supreme Court of Pakistan in the case of *Gul Hassan Jatoi*, which explicitly provides that the police force is an indivisible entity that is commanded by the IGP of the Province, who has vast powers; subject to the approval of the Provincial Government, he can frame orders or rules about the organization, classification, and distribution of the police force. The petitioners were appointed as Inspectors (Investigation) BPS-16 in the Sindh Police Department. Their appointment letter specifically stated that they would work only in the Investigation Unit and would not be transferred to other agencies like ACE, FIA, or Motorway. The cause of action arose when the IGP Sindh merged the Investigation Officers (Inspectors) into the Executive Cadre of the Sindh Police, citing the Supreme Court's judgment in the *Gul Hassan Jatoi case* and relevant Police Rules. Another departmental committee opined that the seniority list of Inspectors (Investigation) and Inspectors (Law/Prosecution) cannot be combined, citing the Police Rules and the Supreme Court's judgment in the *Gul Hassan Jatoi case*. The DIGP/Establishment has ordered that Inspectors must investigate 25 cases before promotion to DSP. The petitioners seek the issuance of their seniority list in the Executive Cadre, transfer and posting to any police branch, and a change in their designation to Inspector (SPS).

10. We do not agree with the findings of the IGP Sindh and other members of the Committee for the simple reason that transferring the investigation wing to the Executive branch is not justified by the Police Act or the Police Rules 1934, citing para 56 of the Gul Hassan Jatoi judgment. The transfer of investigation officers to the Executive branch contradicts the Supreme Court's judgment as their appointment letters as Inspector Investigations limit their transfer and posting to the Executive Branch, is a matter of their terms and conditions of service and is outside the jurisdiction of the court under Article 212 of the Constitution. Therefore, the petitioners cannot be allowed to be transferred from the Investigation wing to perform their service in the Executive Branch of the Police Department. The petition is dismissed as it lacks merit as well.

Head of Constitutional Benches

JUDGE