

**IN HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

C.P No.D-988 of 2024

[Dileep vs. Province of Sindh & Others]

C.P No.D-1394 of 2024

[Ashique Khoso vs. Province of Sindh & Others]

C.P No.D-1498 of 2024

[Rizwan Ali vs. Province of Sindh & Others]

Before:

Mr. Justice Arbab Ali Hakro

Mr. Justice Riazat Ali Sahar

Petitioners by : M/s Mumtaz Ahmed Lashari, Zubair Ahmed Khuhawar & Ayatullah Khuwaja advocates

Respondents by : Mr. Rafique Ahmed Dahri, A.A.G a/w DSP Legal District SBA Nawaz Ali

Dates of Hearing : **06.03.2025**

Date of Decision : **06.03.2025**

JUDGMENT

RIAZAT ALI SAHAR J:- Through this common Judgment, we intend to dispose of captioned petitions as similar law questions, facts, and almost identical relief(s) are involved.

2. The matters before this Court pertain to the appointment of Police Constables within the Sindh Police. Specifically, the facts set out in the aforementioned petitions indicate that the petitioners had applied for positions as Junior Clerk (BPS-11), Police Constable (BPS-07), and Driver Constable (BPS-07) within the Sindh Police Department, Government of Sindh, from various districts, namely Tando Allahyar and Shaheed Benazirabad. According to the petitioners, they successfully completed the entire recruitment process, including written examinations, physical assessments, and *viva voce*/interviews. However, upon the respondents' request

for the verification of the petitioners' character and antecedents from the relevant authorities, it was revealed that they had been implicated in criminal cases, with each petitioner being associated with at least one such case. Consequently, the concerned Recruitment Committee disqualified their candidatures/appointments, despite the fact that the petitioners had been acquitted in these criminal cases.

3. In all petitions, *para-wise* comments and reports were solicited from the official respondents, which have been duly submitted. In their submissions, the respondents reiterated that the petitioners' appointments were rejected on account of their alleged involvement in criminal proceedings.

4. At the very outset, the learned counsel representing the petitioners contended that the Recruitment Committee/Board declined their appointments despite being fully cognisant of the petitioners' acquittal in the criminal cases. They argued that every acquittal, whether on merits or on other grounds, is honourable; therefore, the petitioners ought to have been considered for their appointments as Junior Clerk (BPS-11), Police Constable (BPS-07), and Driver Constable (BPS-07) in the Sindh Police Department, Government of Sindh. The learned counsel further relied on the Revised Sindh Police Recruitment Policy, 2022, particularly referring to Para No. 4.1.18, which stipulates that in the case of a candidate against whom an investigation or trial in a criminal case is pending, the offer of appointment may be held in abeyance until the candidate is cleared either during the investigation or upon

conclusion of the trial, whichever occurs earlier. Additionally, such a candidate shall not be deemed overaged solely on account of the delay caused by the pending investigation or trial; they relied upon the case of the ***Director-General, Intelligence Bureau, Islamabad¹, Chairman Agricultural Development Bank of Pakistan and another²*** and unreported cases of ***Piyar Ali³, Mushahid Hussain and others⁴, Mehmood Khan and others⁵, Ghulam Abbas⁶, Danish Kareem and Muhammad Usama⁷***.

5. Conversely, the learned Assistant Advocate General (A.A.G.) has opposed the petitions, contending that the petitioners are not entitled to appointment in the police force due to their involvement in criminal cases. Accordingly, he prayed for the dismissal of the petitions. They relied upon the unreported case of ***Abdul Ghani and others⁸***.

6. We have heard the learned counsel for the petitioners as well as learned Assistant Advocate General and have meticulously perused the record and case law relied upon with their assistance.

7. Before delving into the merits and discussions, it is imperative to examine the nature of the Petitioners' acquittals. A meticulous perusal of the records reveals the following:

¹ *Director-General, Intelligence Bureau, Islamabad vs Muhammad Javed and others* (2012 SCMR 165)

² *Chairman Agricultural Development Bank of Pakistan and another vs. Muntaz Khan* (PLD 2010 S.C 695)

³ Order dated 25.7.2019, in C.P No.D-2399/2018 (Re: Piyar Ali vs. Province of Sindh and others)

⁴ Judgment dated 08.01.2025, in C.P Nos.D-735/2024 (Re:Mushahid Hussain vs Govt. of Sindh and others), D-1383/2024 (Re:Shahid Ali vs Govt. of Sindh and other and D-1490/2024 (Re: Aamir Ali vs Govt. of Sindh and others)

⁵ Order dated 20.12.2023, in C.P Nos.D-969/2022 (Re: Mehmood Khan and others vs Province of Sindh and others and D-1018/2022 (Re: Muhammad Saleem Khan vs Province of Sindh and others)

⁶ Order dated 28.02.2024, in C.P No.D-966/2023 (Re: Ghulam Abbas vs Province of Sindh and others)

⁷ Judgment dated 19.3.2024, in C.P Nos.D-320/2016 (Re: Danish Kareem vs. Province of Sindh and others) and D-1431/2021 (Re: Muhammad Usama vs. Province of Sindh and others)

⁸ Judgment dated 23.4.2024, in C.P No.D-6135/2023 (Abdul Ghani vs. Province of Sindh & others)

- i. The petitioner, Dileep, in C.P No. D-988 of 2024, was denied appointment on the grounds of his alleged involvement in Crime No. 73 of 2021, registered at Police Station Tando Allahyar, for an offence punishable under Section 8(i) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale, and Use of Gutka and Manpuri Act, 2019. However, he was acquitted under Section 265-H(i) Cr.P.C vide judgment dated 21.08.2021.
- ii. The petitioner, Ashique Khoso, in C.P No. D-1394 of 2024, was denied appointment on the grounds of his alleged involvement in Crime No. 61 of 2021, registered at Police Station Kazi Ahmed, for offences punishable under Sections 337-A, 337-H(ii), 354, 504, 506(2), 147, and 148 PPC. However, he was acquitted by way of compromise under Section 345(6) Cr.P.C vide order dated 26.07.2021.
- iii. The petitioner, Rizwan Ali, in C.P No. D-1498 of 2024, was denied appointment on the grounds of his alleged involvement in Crime No. 12 of 2024, registered at Police Station Nasarpur, for an offence punishable under Section 8(i) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale, and Use of Gutka and Manpuri Act, 2019. However, he was acquitted under Section 245(i) Cr.P.C vide judgment dated 08.05.2024.

8. The primary issue raised by the petitioners pertains to the refusal by the respondents to issue appointment orders despite the petitioners having successfully completed the recruitment process. The justification provided by the respondents for such refusal is the existence of criminal cases previously registered against the petitioners. The learned counsel for the petitioners has placed reliance on unreported orders and judgments passed by the Divisional Bench of this Court in similar cases, wherein petitioners were granted appointments despite having criminal cases registered against them. Notably, reliance has been placed on an order of the Divisional Bench of this Court in the case of *Mehmood Khan and others (supra)*, in which one of us (*Arbab Ali Hakro-J*) was a member. The said order explicitly held that the mere registration or pendency of criminal cases does not constitute a disqualification for appointment in civil service. Furthermore, it is significant to note that the said order was challenged before the Honourable Supreme Court of Pakistan, which upheld the decision, thereby reinforcing the principle that the mere existence of criminal cases, without conviction, does not automatically disqualify a candidate from public employment.

9. The pivotal legal provision in this context is **Section 15 of the Sindh Civil Servants Act, 1973** (the *Act of 1973*), which stipulates:

"No person convicted for an offence involving moral turpitude shall, unless the Government otherwise directs, be appointed to a Civil Service or post."

This provision establishes two essential conditions for appointment:

1. The individual must not be a **convict**.
2. The individual must not have been convicted **for an offence involving moral turpitude**.

Upon a careful examination of the records submitted by the respondents, it is evident that none of the petitioners have been convicted of any offence involving moral turpitude, nor have they been convicted at all.

The term *moral turpitude* refers to conduct that is inherently depraved and contrary to the accepted standards of justice, honesty, and morality within the community. It encompasses offences that reflect a lack of integrity or ethical propriety. In the present case, the petitioners have been **acquitted**, and more importantly, the offences attributed to them do not fall within the category of moral turpitude. Thus, in light of **Section 15 of the Act of 1973**, the acquittal of the petitioners, particularly in offences not involving moral turpitude, removes any legal impediment to their appointment in civil service.

10. The criminal proceedings instituted against the petitioners were of a routine nature and ultimately culminated in their acquittal, achieved either on the merits of the case or through a compromise between the parties. It is a well-established legal principle that an acquittal obliterates any prior declaration of guilt, thereby exonerating the individual, who can no longer be branded as guilty of the alleged offence. The resultant expungement of the stigma of conviction, by virtue of an acquittal from a competent

court, effectively reinstates the individual's presumption of innocence. Moreover, the prevalence of false accusations or the strategic implication of multiple family members in criminal cases cannot be equated to the disqualification contemplated under Section 15 of the Sindh Civil Servants Act, 1973. This provision explicitly precludes the appointment of individuals convicted of offences involving moral turpitude, unless otherwise directed by the Government. The malicious implication of individuals, particularly through familial associations or personal enmity, does not conform to the legislative intent behind the disqualification under Section 15 of the Act of 1973. Thus, when such allegations are proven to be baseless and culminate in acquittal, they should not impinge upon the petitioners' right to appointment—a right they have legitimately acquired by successfully meeting the requisite examination standards. The legal maxim that *acquittal purges the individual of any imputation of guilt* reinforces the notion that, once exonerated, the individual is entitled to all rights and privileges inherent in the civil service, free from any residual taint of past criminal proceedings.

11. In addition to the statutory provisions encapsulated within Section 15 of the Sindh Civil Servants Act, 1973, it is imperative to consider the pertinent guidelines delineated in the Sindh Police Department's Recruitment Policies of 2016, 2019, and 2022. These policies provide comprehensive directives concerning the verification of character and antecedents of candidates. Para 4.1.18 of the said policies unequivocally stipulates

that the verification process must be meticulously conducted by the concerned District Superintendent of Police, the Special Branch, and the Crime Record Office. This procedural mandate ensures a thorough scrutiny of a candidate's past conduct and legal standing. The policies explicitly articulate that candidates convicted in any criminal case shall be disqualified from appointment. Moreover, these guidelines prudently provide that if a candidate is under investigation or facing trial, the offer of appointment may be held in abeyance until the candidate is either exonerated or the charges are dismissed. However, it is paramount to underscore that the petitioners in question, having been acquitted of all charges, are not subject to the disqualifications set forth in these policies. The jurisprudential axiom that *an acquittal effectively nullifies any prior declaration of guilt* further fortifies the petitioners' eligibility for appointment. The legal maxim that *acquittal washes away the taint of a criminal accusation* underscores the principle that once exonerated by a competent court, an individual regains their presumption of innocence and is entitled to all rights and privileges associated with civil service appointments. Furthermore, the malicious practice of false implication or the common stratagem of entangling multiple family members in criminal cases does not constitute a legitimate basis for disqualification under Para 4.1.18 of the Recruitment Policies, nor does it impinge upon the legislative intent embodied in Section 15 of the Act of 1973.

12. Given the petitioners' acquittal, there remains no juridical or procedural impediment to their appointment. The equitable application of the Recruitment Policies, in consonance with the petitioners' acquittal, mandates that their eligibility for appointment be recognised and upheld, ensuring adherence to the principles of justice, fairness, and due process. The acquittal of the petitioners reaffirms their entitlement to be considered for appointment without the residual stigma of prior criminal proceedings. This not only safeguards their rights but also upholds the integrity of the recruitment process, ensuring that acquitted individuals are not unjustly deprived of opportunities solely based on unfounded allegations.

13. In the case of Mehmood Khan and others (Supra), it was held that the registration or pendency of criminal cases does not disqualify an individual from appointment if acquitted. The Supreme Court of Pakistan upheld this decision vide an Order dated 22.10.2024, in Civil Petitions No.81-K and 82-K of 2024), reinforcing that an acquittal nullifies any disqualification arising from the registration of criminal cases.

14. In the seminal case of Chairman Agricultural Development Bank of Pakistan and others (Supra), the Supreme Court of Pakistan elucidated the equivalence between an acquittal secured through compromise under Sections 309 and 310 PPC and an acquittal obtained under Sections 245 or 265-H Cr.P.C. The doctrine of "Badal-i-Sulh", a cornerstone of Islamic jurisprudence, emerges as a pivotal mechanism for the reconciliation and

resolution of disputes, particularly in cases where the offended party consents to forgo retributive justice in exchange for compensation or restitution. The provisions of Sections 338-E(1) and 345(6) of the Cr.PC unequivocally articulate that the composition of an offence, whether through judicial or extrajudicial settlement, culminates in the acquittal of the accused. Specifically, Section 338-E(1) underscores that in cases of Qisas and Diyat, the waiver or compounding of the right of Qisas by the Wali (heir of the victim) unequivocally results in the exoneration of the accused. Section 345(6) further reinforces this principle by stipulating that the compromise or composition of an offence, once duly ratified by the competent Court, mandates the acquittal of the accused. The concept of "Badal-i-Sulh", derived from the Arabic terms "Badal" (substitute) and "Sulh" (settlement), signifies a conciliatory mechanism wherein the aggrieved party agrees to absolve the accused in consideration of compensation. This restitution framework, deeply ingrained in the ethos of restorative justice, seeks to mend the social fabric disrupted by the offence and restore harmony between the conflicting parties.

The relevant Paras No. 7, 8, and 9 of the said judgment are reproduced hereunder:

"7. After hearing the learned counsel for the parties and going through the record of this case with their assistance and after perusing the precedent cases cited before us, we have entertained no manner of doubt that the majority verdict delivered by the Federal Service Tribunal, Islamabad reinstating the respondent in service with all the back benefits was quite justified both on facts and in law. We may

observe that prior to the introduction of the Islamic provisions in the Pakistan Penal Code, 1860, an acquittal of an accused person could be recorded when the prosecution failed to prove its case against him beyond a reasonable doubt or when faced with two possibilities, one favouring the prosecution and the other favouring the defence, the Court decided to extend the benefit of the doubt to the accused person and an acquittal could also be recorded under section 249-A, Cr. P. C. or section 265-K, Cr. P. C. when the charge against the accused person was found groundless or there appeared to be no probability of his being convicted of any offence. After the introduction of the Islamic provisions in the Pakistan Penal Code, 1860, it has now also become possible for an accused person to seek and obtain his acquittal in a case of murder either through waiver/Afw under section 309, PPC or on the basis of compounding/Sulh under section 310, PPC. In the case of waiver/Afw, an acquittal can be earned without any monetary payment to the heirs of the deceased, but in the case of compounding/Sulh, an acquittal may be obtained upon acceptance of Badal-i-Sulh by the heirs of the deceased from the accused person. In the present case, the respondent had been acquitted of the charge of murder by the learned Sessions Judge, Lakki Marwat, as a result of compounding of the offence, and such compounding had come about on the basis of acceptance of Badal-i-Sulh by the heirs of the deceased from the respondent. It is true that Diyat is one of the forms of punishment specified in section 53, PPC but any discussion about Diyat has been found by us to be totally irrelevant to the case in hand because the respondent had not paid any Diyat to the heirs of the deceased but he had in fact paid Badal-i-Sulh to them for the purpose of compounding of the offence. It goes without saying that the concept of Badal-i-Sulh is totally different from the concept of Diyat inasmuch as the provisions of subsection (5) of section 310, PPC and the Explanation attached therewith show that Badl-i-Sulh is to be "mutually agreed" between the parties as a term of Sulh between them whereas under section 53, PPC C Diyat is a punishment and the provisions of section 299(e), PPC and section 323, PPC manifest that the amount of Diyat is to be fixed by the Court. The whole edifice of his arguments built by the learned counsel for the appellants upon Diyat being a form of punishment has, thus, appeared to be utterly misconceived.

8. The provisions of the first proviso to subsection (1) of section 338-E, PPC clearly contemplate acquittal of an accused person on the basis of compounding of an offence

by invoking the provisions of section 310, PPC 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 leaves 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....."

[Emphasis is supplied]

15. Similarly, in the case of ***the District Police Officer, Mianwali and 2 others***⁹, the Supreme Court of Pakistan reaffirmed the same view, holding that –

"It is by now well settled that a civil servant facing expulsive proceedings on departmental side on account of his indictment on criminal charge may not save his job in the event of acquittal as the department still may have reasons/material, to conscionably consider his stay in the service as inexpedient; there are additional reasons to disregard his acquittal inasmuch as criminal dispensation of justice involving corporeal consequences, comparatively, requires an higher standard of proof so as to drive home the charge beyond doubt, an exercise to be routed through a procedure stringently adversarial, therefore, factuality of the charge notwithstanding, procedural loopholes or absence of evidence, sufficient enough to sustain the charge, at times occasion in failures essentially to maintain safe administration of criminal justice out of abundant caution. Departmental jurisdiction, on the other hand, can assess the suitability of a civil servant, confronted with a charge through a fact finding method, somewhat inquisitorial in nature without heavier procedural riders, otherwise required in criminal jurisdiction to eliminate any potential risk of error, therefore, the Tribunal has undoubtedly misdirected itself in reinstating the respondent, considering his acquittal as the sole criterion in isolation to the totality of

⁹ District Police Officer, Mianwali and 2 others vs Amir Abdul Majid (2021 SCMR 420)

circumstances whereunder he had succeeded to vindicate his position. Reference may be made to the cases of Dr. Sohail Hassan Khan and others v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), Liaqat Ali v. Government of N.W.F.P. through Secretary Health, Peshawar and others (2011 PLC (C.S.) 990), Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan (PLD 2010 SC 695), Government of Pakistan through Secretary Ministry of Finance and others v. Asif Ali and others (2007 PLC (C.S.) 271), Superintendent of Police, D.I. Khan and others v. Ihsanullah (2007 SCMR 562), Sami Ullah v. Inspector-General of Police and others (2006 SCMR 554), Ractor Comsats v. Ghulam Umar Kazi (2006 SCMR 1894), Executive Engineer and others v. Zahid Sharif (2005 SCMR 824), Khaliq Dad v. Inspector-General of Police and 2 others (2004 SCMR 192), Arif Ghafoor v. Managing Director, H.M.C., Texila and others (PLD 2002 SC 13), Mir Nawaz Khan v. Federal Government through Secretary, Ministry of Finance, Islamabad and 2 others (1996 SCMR 315), Talib Hussain v. Anar Gul Khan and 4 others (1993 SCMR 2177), Mud Izharul Ahsan Qureshi v. Messrs P.I.A.C. (1994 SCMR 1608), Muhammad Nazir v. The Superintendent of Police, Toba Tek Singh and others (1990 SCMR 1556) Muhammad Tufail v. Assistant Commissioner/Collector (1989 SCMR 316), Muhammad Saleem v. Superintendent of Police, Sialkot and another (PLD 1992 SC 369), Muhammad Ayub v. The Chairman, Electricity Board, WAPDA, Peshawar and another (PLD 1987 SC 195), The Deputy Inspector-General of Police, Lahore and others v. Anis-ur-Rehman Khan (PLD 1985 SC 134) and Begum Shams-un-Nisa v. Said Akbar Abbasi and another (PLD 1982 SC 413). However, while reaffirming the declaration of law referred to above, nonetheless, after hearing the learned Additional Advocate General and examining the record, having regard to the peculiarity of circumstances, we do not feel persuaded to non-suit the respondent, present in person, merely on account of flawed handling of his plea by the Tribunal.”

16. The unreported judgment dated 23.04.2024, delivered by the Divisional Bench of this Court in the case of Abdul Ghani and others (supra), cited by the learned A.A.G., deliberated upon various unreported judgments/orders from different benches of this

Court, including the case of Mehmood Khan (supra). It was determined that these judgments were per incuriam, as they failed to address the proviso to Section 6(3) of the Sindh Civil Servants Act, 1973, nor did they attempt to distinguish between the two relevant judgments of the Honourable Supreme Court. Consequently, the petitioners in Abdul Ghani's case were denied relief and were not appointed to the police force. Notably, the order in the case of Mehmood Khan (supra) was challenged by the Government before the Honourable Supreme Court of Pakistan through Civil Petitions No. 81-K & 82-K of 2024. However, the Supreme Court refused leave to appeal and upheld the order passed in Mehmood Khan's case vide order dated 22.10.2024. The Supreme Court held that the Divisional Bench had correctly interpreted the provisions of the Policy of 2022 and Section 15 of the Act of 1973 and that the learned Additional Advocate General failed to demonstrate any legal infirmity in the impugned judgment warranting interference. Consequently, the order passed by the Honourable Supreme Court is binding on this Court under Article 189 of the Constitution of Pakistan and thereby supersedes the order passed by the Divisional Bench in the case of Abdul Ghani and others (supra).

17. Based on the above discussion, we conclude that the Petitioners, having been acquitted either by trial or by way of compromise are legally entitled to their appointments, therefore, all the captioned petitions are **allowed**.

18. For the foregoing reasons, the Respondents/concerned authorities are directed to issue appointment orders to the Petitioners within one month positively, ensuring compliance with the relevant legal provisions and judicial precedents discussed herein.

JUDGE

JUDGE

Sajjad Ali Jessar