

**IN THE HIGH COURT OF SINDH AT KARACHI.**

Constitutional Petition No.D-3238 of 2013.

**Present.**

Mr. Justice Irfan Saadat Khan  
Mr. Justice Adnan-ul-Karim Memon

Ghulam Ali Gopang ..... Petitioner

Versus

The Province Sindh and others ..... Respondents

Date of Hearing: **06.03.2018**

Mr. Faizan Hussain Memon Advocate for the Petitioner.  
Mr. Sheryar Mehar, AAG.

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**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** In the above captioned petition, Petitioner is seeking appointment as Inspector in Sindh Police on the basis of the Shaheed Quota.

2. The gist of the case of Petitioner is that the brother of the Petitioner (Sher Muhammad Gopang) was working in Police Department, Government of Sindh as Inspector and embraced Shahadat, while performing his duties in the year 2006 vide Obituary dated 13.01.2007. Petitioner has submitted that he being eligible, in all respect for appointment to the post of Assistant sub-Inspector/ Inspector, in Sindh Police Department against "Shaheed Quota" and on 18.02.2010 submitted an application to the Deputy Inspector General of Police, training Sindh Karachi, which was replied with the endorsement dated 02.03.2010 that the post of ASI/ Inspector in Sindh Police can only be filled through Sindh Public Service Commission and the Petitioner was directed to appear in the Interview, as and when the aforesaid posts would be notified by the

Competent Authority. Petitioner being aggrieved by and dissatisfied with the failure of the Respondents to appoint the Petitioner against Shaheed quota has approached this Court on 06.08.2013.

3. The Respondents who were represented by the AAG did not file comments in spite of several chances.

4. Mr. Faizan Hussain Memon, learned Counsel for the Petitioner has argued that the Petitioner had initially applied for the post of ASI against Shaheed quota and he has been persistently pursuing the police hierarchy for his appointment as ASI on Shaheed quota; that Petitioner was asked to wait for the advertisement to be published by the Sindh Public Service Commission; that in the intervening period, the Respondents appointed a number of candidates as ASI on Shaheed quota, but the case of the Petitioner being an eligible candidate for the post of ASI was not considered for his appointment; that discrimination was meted out with the Petitioner; that the Government of Sindh from time to time issued various Notifications for appointment in Police Department on the basis of Shaheed Quota; that it is incumbent upon Respondents to fulfill their lawful promise to appoint the Petitioner; that Respondents are discriminating the Petitioner in violation of Standing Orders, Police Rules and the fundamental law; that the application of the Petitioner has wrongly been withheld by the Respondents on false and fabricated grounds with malafide intention and ulterior motives; that Petitioner is entitled to be appointed to the post of ASI on the basis of Shaheed quota; that the Petitioner has been seriously prejudiced and was not treated equally, therefore the Petitioner is entitled to be treated equally in accordance with law, as provided under Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973; that the Petitioner has been denied his fundamental

rights; that grave injustice has been done with the Petitioner with no fault on his part by depriving him for appointment on the post of ASI; that due to such acts and deeds of the Respondents, the Petitioner has suffered mental torture, agonies and by such situation the Petitioner is facing problems too; that the denial in this regard by the Respondents amounts to invade upon and infringement of the fundamental legal rights of the Petitioner, as safeguarded under the Constitution of Islamic Republic of Pakistan 1973 that are enforceable by this Court in exercise of its Constitutional jurisdiction; that the Petitioner has been continuously approaching personally all the movers and shakers to admit him for the post of ASI on the basis of Shaheed Quota; that the Petitioner is aggrieved with the illegal action of the Respondents and has the right to be appointed on the post of ASI on the basis of Shaheed quota. He lastly prays for allowing the instant Petition. Learned counsel for the Petitioner was asked to satisfy this Court that how and under what circumstances and which provision of law either Islamic or other law a brother is entitled for appointment on the basis Shaheed quota. Learned counsel did not address on the query raised by this Court however he referred to the affidavit of the wife of deceased who has given no objection in favour of the Petitioner for appointment of ASI in Sindh Police.

5. Mr. Sheryar Mehar, learned A.A.G Sindh representing the Respondents has contended that the post of ASI in Police Department Government of Sindh can only be filled through the competitive process to be initiated by the Sindh Public Service Commission; that neither any post reserved against "Shaheed quota" was requisitioned by the Police Department nor advertised as such by the Commission; that Petitioner is not entitled to be appointment as ASI in Police

Department on the basis of Standing Orders issued by the office of the Inspector General of Police Sindh without approval of the Government of Sindh. He lastly prayed for dismissal of the instant Petition.

6. We have heard the learned counsel for the parties and perused the material available on record.

7. The primordial questions in the subject Petition is that:-

- i) Whether the Petitioner can claim appointment as ASI for the recruitment against Shaheed Quota, under Standing Orders issued by the Inspector General of Police Sindh, which has not been approved by the Provincial Government under Section 12 of the Police Act-1861 or**
- ii) Whether the post of ASI can be filled through Sindh Public Service Commission as provided under Section 7 (3) of Police Order 2002,**

8. Let us first take up the legal issue of appointment in Sindh Police through Standing Order issued by the Inspector General of Police. It has been agitated by the learned counsel for the Petitioner that under the Standing Orders issued by the Inspector General of Police for appointment for the post of ASI on Shaheed quota is valid and the appointment can be made without resorting to the Sindh Public Service Commission. To rebut the said contention of the Petitioner, learned AAG has stated that all the Standing Orders issued by the Inspector General of Police, without approval of Provincial Government have been declared nullity by the Hon'ble Supreme Court of Pakistan, in the case of Gul Hassan Jatoi & others Vs. Faqeer Muhammad Jatoi & others (2016 SCMR 1254), therefore no sanctity can be attached to such Standing Orders to claim appointment on Shaheed quota.

9. That on the Examination of Section 12 of the Police Act 1861, the relevant portion is re-produced as follows:-

**“12. Power of Inspector-General to make Rules:**

***“The Inspector-General of Police may, from time to time, subject to the approval of the [Provincial Government], frame such orders and rules as he shall deem expedient relative to the organization, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be formed by them; their inspection, the description of arms, accoutrements and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information, and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.”***

10. Moreover section 12 of the Police Act, 1861 leaves no doubt or ambiguity as to the fact that the police force is commanded by Inspector General of Police, who has powers to frame Orders and Rules, but subject to the approval of the Provincial Government. He can frame Orders or Rules with regard to the recruitment, organization, classification and distribution of police force. In other words the aforesaid Provision enables the Inspector General of Police to cater to the situation, where it is expedient for him to issue such orders and make such rules with the approval of the Government, as are required to meet the contingencies. We are fortified by the Judgment of Honourable Supreme Court rendered in the case of Gul Hassan Jatoi & others Vs. Faqeer Muhammad Jatoi & others (2016 SCMR 1254) in which the Honourable Supreme Court has held that the Standing Orders issued by Inspector General of Police has to be approved by the Provincial Government. Admittedly, the Standing Orders have not been approved by the Provincial Government, therefore no sanctity can be attached with the Standing Orders to claim benefit out of it.

11. Let us take a look on Section 7 (3) of Police Order 2002 (since repealed) which reads as under:-

***“The recruitment in the police other than ministerial and specialist cadres shall be in the rank of ‘constable, Assistant sub-Inspector and Assistant Superintendent of Police.***

***Provided that selection for direct recruitment in the rank of Assistant Sub-Inspector shall be through the appropriate Public Service Commission and shall not exceed twenty five percent of total posts in that rank.”***

12. So far as appointment of the Petitioner on Shaheed quota is concerned, recently the Honourable Supreme Court in the case of Gul Hassan Jatoi & others (*supra*) and in the case of Mohammad Nadeem Arif & others Vs. IGP Punjab, Lahore & others (2011 SCMR 408) has declared the Standing Orders issued by the IGP without approval of the Government to be of no legal sanctity.

13. Admittedly, the Petitioner has not been assessed and declared successful candidate by Sindh Public Service Commission therefore, he cannot claim issuance of appointment letter as a matter of right. The recommendations of the Petitioner, if any, made by the Police Department for the post of ASI on Shaheed quota is in violation of law cannot be given sanctity. Even otherwise, the same powers are subject to the approval of the Government.

14. During the course of arguments, much emphasis has been laid on the Rule-11-A of Sindh Civil Servant (Appointment, Promotion, Transfer Rules-1974), by the learned counsel for the Petitioner and argued that Petitioner can be accommodated under the aforesaid rules. It would be better to reproduce the Provision of Rule-11-A of Sindh Civil Servant (Appointment, Promotion, Transfer Rules-1974), provides complete mechanism for appointment against the son quota. The relevant portion of Rule 11-A of Sindh Civil

Servants (Appointment, Promotion, Transfer) Rules 1974 is reproduced herewith:-

***“11-A. Where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his children shall be provided job on any of the pay scales Nos.1 to 10 in the Department in which the deceased civil servant was working without observance of the prescribed formalities if such child is otherwise eligible for the post.”***

15. In the present case, the Petitioner has applied for the post of ASI through Police Department and not through Sindh Public Service Commission and in our view he has to meet the eligibility criteria for the post of ASI, which he failed to meet under the law, however it is well settled now that Sindh Civil Servants Act 1973 is an act of general application and it has no Constitutional status, accordingly, it is as much a law as the Police Act 1861, with the added distinction that it is of general application, while the Police Act is of Special application to the officers of the subordinate rank of the Police Force. The same is true with the rules also.

16. We have also gone through the Sindh Shaheed Recognition and Compensation Act, 2014 (Sindh Act No. XVI of 2014) published in Sindh Government Gazette on 11.06.2014. The case of Petitioner does not fall within the ambit of definition clause (f) of Section 2 and section 3 (5) of said Act. For ready reference sub section (5) of Section 3 and Section 2 (f) are reproduced as under:-

**“Government shall, in addition to the financial compensation under sub-section (4), appoint at least two members of the family being the legal heirs of Shaheed person into service of Government in relaxation of the conditions of qualifications and age, to the extent as Government may deem appropriate.”**

Section 2 (f) of Sindh Shaheed Recognition and Compensation Act, 2014, provides definition of Shaheed which reads as under:-

**“Shaheed” means a person who offered sacrifice of his life in line of duty in counter terrorism or becomes victim of an act of terrorism operation or targeted and killed by**

**terrorists group and declared Shaheed in the manner prescribed by Government.”**

17. In this view of the matter, the question as to which would prevail over the other in case of inconsistency is of no difficulty, it should not be forgotten that the Police Act and the Rules framed thereunder are such as would be applicable to a disciplined Force only, while the Civil Servants Act cannot serve this purpose. Reliance is safely placed on the case of Inspector General of Police, Punjab, Lahore another vs. Mushtaque Ahmed Waraich and others (PLD 1985 SC 159).

18. Reverting to the claim of the Petitioner that he being brother of deceased (Sher Muhammad Gopang) is entitled for the post of ASI in Sindh Police, we are not convinced with the assertion of the learned counsel for the Petitioner for the simple reason that Petitioner has to meet firstly the eligibility criteria for the post of ASI as provided under the Police Rules 1934 before being appointed on a designated post, which in the present case are totally lacking.

19. In view of the foregoing, we are of the considered view that the Respondents cannot circumvent the law to make recruitment for the post of ASI in Police Department against the Shaheed quota by issuing Standing Orders or resorting by invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion, Transfer) Rules 1974, without competitive process.

20. In the light of above discussion, the instant constitutional petition along with the pending application(s) is dismissed being not maintainable.

Karachi  
Dated:- 08.03.2018.

JUDGE

JUDGE