

IN THE HIGH COURT OF SINDH AT KARACHI.

Present.

Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Adnan-ul-Karim Memon

C.P. No.D-5835 of 2016.

Muhammad Ali Kamal	Petitioner
Versus	
Province of Sindh and another	Respondents.

C.P No.D-5836 of 2016.

Faiz Ali	Petitioner
Versus	
Province of Sindh and another	Respondents.

Date of Hearing: **14.12.2017**

Mr. Faiz H. Shah, Advocate for the Petitioners.
Mr. Abdul Jalil Zubedi, Assistant Advocate General Sindh.
Along with Shahid Pervez Qazi, Home Secretary Government of
Sindh and Amanullah Zardari, Focal Person, Home Department.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:-, Petitioners are seeking declaration to the effect that the Impugned Notifications dated 07.05.2013 issued by Respondent No.1 is illegal, arbitrary not warranted by the law and void ab-initio and the same be set aside. Petitioners seek further declaration that the subsequent Notifications dated 18.10.2016 are illegal and void ab-initio. Petitioners are also seeking direction that the Order dated 19.02.2013 issued by the Respondent No.1 is legal and lawful on

the assertion that Petitioners are eligible and fit candidates for appointment as Deputy Superintendent of Police (DSPs) BPS-17 in Sindh Police Department, on the basis of Shaheed quota.

2. The facts of the case of Petitioners are that father of the Petitioners namely Kamal Hussain Manghan (the then Deputy Superintendent of Police) embraced Shahadat in a bomb blast that had taken place on 24.04.2013. Petitioners added that the Government of Sindh considered the case of the Petitioners and were appointed as Deputy Superintendents of Police (BPS-17) in lieu of Shahadat of Petitioner's father vide Respondent No.1's Notification dated 19.02.2003, in pursuance of the aforesaid Notification Petitioners joined the post of DSP in Sindh Police and the said Notifications have been withdrawn by the Respondent No.1. Petitioners further averred that the Respondents orally informed that the appointment of the Petitioners has been annulled by the Order passed by the Hon'ble Supreme Court. Petitioners further added that on 03.10.2016, they were appointed as Police Inspector (BS-16) in Sindh Police under Rule 12.3 of Police Rules 1934 and such approval of Competent Authority was obtained in pursuance of sub-section 4 of section 5 of "The Sindh Shaheed Recognition & Compensation Act 2014. Petitioners have further added that the Government of Sindh issued Notifications dated 18.10.2016 by placing the appointment letters/Notifications of the Petitioners in abeyance. Petitioners being aggrieved by and dissatisfied with the impugned Notifications dated 03.10.2016 and 18.10.2016 have approached this Court on 26.10.2016.

3. Upon notice, the Respondents have filed their para-wise comments and denied the adverse allegations leveled by the Petitioners.

4. Mr. Faiz H. Shah, learned Counsel for the Petitioners has contended that the Petitioners were appointed as Deputy Superintendent of Police (BS-17) and were wrongly removed from service without any cogent reason; that the Respondents have assigned lame excuse and referred to the Order issued by the Hon'ble Apex Court that the appointment of the Petitioners are against the law, thus the same was withdrawn. Learned counsel states that this is hardly a ground to remove the Petitioners from the post of BS-17; that Respondents cannot be allowed to approbate or reprobate at once; that the appointments have been made in accordance with law and the same cannot be withdrawn unilaterally; that the statute in question "The Sindh Shaheed Recognition & Compensation Act 2014" is declaratory statute as well as beneficial statute and the Respondents are bound to provide absolute benefit in favour of the Petitioners in accordance with its Provisions; that the Respondents arbitrary capriciously and in oppressive manner issued the impugned Notifications dated 07.05.2013, which is a non-speaking order issued in mechanical manner without any reason and in an oppressive manner and is liable to be set aside; that the Respondents under their policy have appointed several persons as DSPs, who's father or brother have embraced Shahdat during service even on the post of ASI and / or SHO and thus the Respondents are stopped from demoting the

Petitioners; that the Petitioners have been discriminated in violation of Article 25 of the Constitution of Islamic Republic of Pakistan 1973. Learned counsel next contended that under the Provision of the Sindh Shaheed Recognition and Compensation Act 2014, Petitioners were appointed as Inspector but subsequently vide Notification dated 18.10.2016 their appointment has been placed in abeyance in violation of law and directives issued by the Competent Authority that needs to be taken care of by this Court. Learned counsel added that Petitioners are ready and willing to join as Inspector if the impugned Notification dated 18.10.2016 is set aside by this Court. Learned counsel stated at the bar that the Government of Sindh had already appointed Syed Irfan Ali and Arif Aziz as DSPs in Sindh Police in lieu of Shahadat of their father. He further added that their suitability for the post of DSPs were referred to the Sindh Public Service Commission and prays that the similar treatment may be given to the Petitioners.

5. Mr. Abdul Jalil Zubedi, learned A.A.G Sindh, representing the Respondents has contended that That Sindh Government withdrew the appointment of the Petitioners as DSP in view of the judgment passed by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456). He next argued that the post of DSP-17, the same falls within the ambit of Sindh Public Service Commission, thus circumventing the competitive process is not called for : He has further contended that previously the Petitioners were appointed on the post of inspector against Shaheed quota pursuant to section 5 of the

Sindh Shaheed Recognition and Compensation Act 2014 and subsequently the Government of Sindh by realizing the legal position/aspect of the matter of appointment, that the benefits available under the aforesaid Act are applicable w.e.f. the date of enactment of this Act, 2014, whereas the Shahadat of Mr. Kamal Hussain Manghan (DSP) took place on 25.01.2013, therefore the Notification dated 03.10.2016 of appointment of petitioners was kept in abeyance and the matter was referred to the Law Department for opinion; that Petitioners can only be considered for the post as provided under Section 5 of the Sindh Shaheed Recognition and Compensation Act 2014 with the approval of Competent Authority, if the petitioners meet the eligibility criteria; that the Petitioners cannot be directly appointed as Inspector in Sindh Police subject to fulfillment of requisite eligibility and qualification as provided under the recruitment rules.

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

7. Since important question of law is involved in the subject Petition that finalizes the controversy in hand is,

- i) *Whether the Petitioners can claim appointment as Deputy Superintendent of Police / Inspector for the recruitment against Son/Shahheed Quota, under Sindh Shaheed Recognition and Compensation Act 2014.*

8. We have also gone through the Notification dated 07.05.2013 issued by Home Department Government of Sindh / Respondent

No.1 and passage of the same is reproduced here for the sake of convenience:-

NOTIFICATION

No. So (POL-1) HD/4-7/2011:- With the approval of competent authority i.e. Chief Minister Sindh, Mr. Muhammad Ali S/o of Shaheed Kamal Khan Manghan is hereby appointed as Deputy Superintendent of Police (BS17) in Sindh Police is hereby withdrawn, with immediate effect.

***Waseem Ahmed
Additional Chief Secretary
Home Department***

9. Firstly, we would like to resolve the issue raised by the learned counsel for the Petitioners with regard to the appointment of Petitioners as Deputy Superintend of Police (BPS-17) in Sindh Police. In this respect we seek guidance from the judgment rendered by the Hon'ble Supreme Court in the case of Ali Azhar Baloch supra. The Hon'ble Supreme Court at paragraph No. 188 has held as under:-

“The background of the notification of 07.05.2013 of the Sindh Government was that during the hearing of arguments in C.P. No. 71 of 2011 and other Petitioner in Criminal Original Petition No. 89-K of 2011, two CMAs numbered as 245/2013 and 247/2013 were filed, complaining that the Sindh Government had appointed 10 D.S.P.s without observing requisite codal formalities on 06.05.2013, this Court enquired from the Additional Advocate General Sindh, representing the Sindh Government to satisfy the Court as to how the Sindh Government, to satisfy the Court as to how the Sindh government could appoint D.S.Ps without recourse to the procedure prescribed under the service law. The instructions and on the following day, he made a statement that all the D.S.Ps appointed directly,

including the petitioner, have been identified by notification dated 07.05.2013.

10. In the light of findings of Hon'ble Supreme Court as referred to hereinabove, we are also clear in our mind that as per the law, the posts of Deputy Superintendent of Police BPS-17 can only be filled through the competitive process as provided under the law, therefore this Court cannot substitute its own findings in place of the findings given by the Hon'ble Supreme Court in the case discussed supra, at this juncture the case of petitioners for the post of DSPs cannot be reopened.

11. Reverting to the moot point raised by the learned Counsel for the Petitioners that the Respondents have issued Notification dated 18.10.2016 by placing the Notification dated 03.10.2016 in respect of Petitioners' appointment as Inspector (BPS-16) in Sindh Police on Shaheed quota is concerned, the law as called Sindh Recognition and Compensation Act, 2014 (Sindh Act No. XVI of 2014), published in Sindh Government Gazette on 11.06.2014) is very much clear requires no interpretation. Subsection (5) of Section 3 provides 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 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.”

12. Even otherwise the case of the Petitioners do not fall within the ambit of definition of clause (f) and section 3 (5) of Sindh Shaheed Recognition and Compensation Act, 2014. Petitioners cannot take resort of the Act, 2014 to claim appointment for the post of Inspector in Sindh Police.

13. In view of the above discussion, it is crystal clear that the Police Department cannot circumvent the law to make recruitment to the post of Inspector/DSP on the basis of Son/Shahheed quota by issuing appointment order of Inspector / DSPs in pursuance of subsection 4 of the section 5 of “The Sindh Shaheed Recognition and Compensation Act, 2014.

14. We have scanned all the relevant Act, Rules and Notification, but have not come across any such provision vesting power with the Competent Authority to relax the qualification viz. age and Physical Standards for the post of Inspector/DSPs. The qualification required from the candidates under Rule 12.3 of Police Rules 1934 is the prerequisite for the appointment to a post of Inspector. The Recruitment Rules were notified by the Government of Sindh vide Notification No. POL-H/6-3/95 dated 22.11.1995. It is settled principle of law that no relaxation in age and qualification can be made and only the candidates, who meet the criteria can be appointed and not otherwise. In this regard, our view is supported by Rules 12.6 & 12.15 of Police Rules 1934,

which makes it clear that the same cannot be relaxed as discussed above.

15. Reverting to the plea taken by the learned counsel for the Petitioners that the case of the Petitioners may be referred to Sindh Public Service Commission to determine their suitability for appointment as DSPs/ Inspector on regular basis in accordance with Sindh Civil Servant (appointment, Promotion and Transfer) Rules 1974. We are unable to agree with the contention raised by the learned counsel for the Petitioners for the simple reason that the Hon'ble Supreme Court has already observed in the case of Ali Azhar Khan Baloch supra, on the issue of appointment of DSPs in Sindh Police to be made through the competitive process and not otherwise.

16. We are of the considered view that Respondents have rightly rejected the claim of the Petitioners for the post of Inspector/DSPs. The Petitioners have failed to establish their case regarding discrimination and/ or violation of any law, which prima-facie no right of the Petitioners have been infringed.

17. In view of what has been discussed above, the instant Constitutional Petitions are dismissed along with pending applications(s).

JUDGE

JUDGE

Karachi
Dated:- 14.12.2017

Shafi Muhammad /P.A