

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-1104 of 2017

Mazhar Hayat & 02 others Petitioners

Versus

Province of Sindh& othersRespondents

C.P No.D-8152 of 2017

Muhammad Shahzad Petitioner

Versus

Province of Sindh & othersRespondents

Date of hearing: 22.05.2018

Mr. Abdul Salam Memon, Advocate for Petitioners.

Mr. Sibtain Mehmood, Assistant Advocate General Sindh along with DSP Raza Mian, for the Respondents.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - The above referred Constitutional Petitions are being disposed of vide this Single Judgment, as common question of law and facts are involved therein.

2. Brief facts of the case in nutshell are that in pursuance of the advertisement published in 'Daily Dawn' dated 29.10.2016 inviting applications for recruitment of Police Constables (BS-5) in Sindh Police Department, Petitioners applied for the post of Police Constable (BS-5). As per Petitioners, Respondents started recruitment process, after processing the applications of the Petitioners through NTS, in the month of December, 2016 on different dates, the Respondent No.2 conducted written test through National Testing Service (NTS). Petitioners added that after conducting the physical test, written test and interview/Via-voice the Respondent No.2 issued a final merit list of successful candidates for the post of Police Constable in Karachi range vide result dated 28.1.2017 (Team-14). Petitioners asserted that after passing of the aforesaid tests, they have paid the medical fee to undergo the medical test but the Respondents declined to entertain the petitioners on the premise that the Petitioners' qualification is not from any Board of Secondary Education located in Sindh. Petitioners further claim that they having successfully qualified the written test and interview and had legitimate expectation of appointment for the post of Police Constable BS-05. Per petitioner, on the intervention of Chief Minister Sindh other candidates were given the appointment letters who did not meet the said qualification criteria. The Petitioners have asserted that they have been singled out in the recruitment process for the posts of Police Constables. Petitioners have submitted that the act of Respondent-Police department

tantamount to circumvent the law and sabotage the merit on their own whims, which has no sanctity in law and the same is without lawful justification; that the Respondent-Police department has no authority or jurisdiction in law to impose certain condition of such degree certificate from any Board of Secondary Education located in Sindh only, which is in violation of Article 27 of the Constitution and Recruitment Rules framed for the post of Police Constable BS-05. Petitioners further added that they approached the Respondent-Police department for further process of recruitment, but to no avail as they were informed by the officials of the Respondent-Police department that there is no room for the Petitioners for the post of Police Constable as they did not meet the criteria to have qualification from the Board of Secondary Education located in Sindh. Per Petitioners, they were surprised rather shocked to know that certain conditions were imposed by the Respondent-police department just to knock out the Petitioners for obtaining the post of police Constable BS-05 after qualifying written test and interview. Petitioners further added that they had forwarded a complaint regarding injustice made with them by the Respondent-Police department in the recruitment process conducted in Karachi region. Petitioners averred that in terms of Rule 4 of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974, the Respondent-Police department is the competent authority for the appointment of candidates in BPS-05. Petitioners further added that Respondents are under legal obligation to complete the process by recruiting the successful

candidates/ Petitioners; thus the Respondents have failed to recruit/ consider the Petitioners without any lawful justification or reason. Petitioners being aggrieved by and dissatisfied with the aforesaid actions of the Respondents have filed the instant petitions.

3. Upon notice, the Respondents filed para wise comments and denied the allegations.

4. Mr. Abdul Salam Memon learned counsel for the Petitioners has argued that the Respondents have violated the rights of the Petitioners by failing/delaying to issue appointment letters, despite the fact that the Petitioners have successfully passed the prescribed examination and interview; that after successfully clearing the examination and interview, the Petitioners have acquired a vested right and interest to be appointed on the post of Police Constable BS-05, which cannot be nullified/denied by the whimsical and arbitrary actions of the Respondents; that the Respondents are acting in violation of the prescribed Rules as mentioned under the terms of Rule 4 of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974, where the Respondent-Police department is the competent authority for appointment of the candidates; that the action of the Respondents is in violation of the Fundamental Rights of the Petitioners guaranteed under Articles 18, 24, 25 and 27 read with Articles 4 and 8 of the Constitution; that due to omission/failure of the

Respondents to fulfill their legal obligations and timely discharge of their duties/functions, the Petitioners are being deprived of their lawful rights to be considered for appointment against the post of Police Constable (BPS-5), that the purported policy imposing condition of qualification from any Board of Secondary Education located in Sindh is discriminatory and against the fundamental rights of the Petitioners thus not sustainable in law; that the Petitioners have completed all the codal formalities viz physical test, written test, interview, via-voce test and have also paid the required fee for medical fitness; that the Petitioners are holding domicile of Karachi therefore the Petitioners' right to seek job is their fundamental right for the particular post and that cannot be snatched by imposing condition of certain qualification from certain area which is violative of principle of natural justice; that the Petitioners have the right to seek education from any corner of Pakistan and its province and nobody including the Respondents can curtail such rights of the Petitioners as guaranteed under the Constitution; that the Respondents are acting beyond the mandate of law. He lastly prays for allowing the instant petitions.

5. Mr. Sibtain Mehmood, learned AAG representing the Respondents has raised the issue of maintainability of the captioned Petitions and argued that as per advertisement dated 29.10.2016, the required post of Constable BS-05 has to be filled and the Petitioners have to meet the criteria as set forth in the Recruitment Rules for which Petitioners were well aware of the fact

that they did not have the qualification from any Board of Secondary Education located in Sindh. He further added that no violation deviation from Recruitment Rules/ Policy has been made, which may prejudice the case of the Petitioners; that they voluntarily appeared in the Recruitment process for the post of Constable BS-05 having knowledge that they were neither eligible nor qualified to apply for the post; that this Court has no jurisdiction to interfere in the appointment process initiated under the Recruitment Rules / Policy; that after scrutiny of the documents it revealed that the metric certificate furnished by 30 candidates including the Petitioners were found pertaining to the education Boards out of Sindh province, which was against the condition mentioned in the advertisement dated 29.10.2016 as well the NTS registration form; that the Petitioners under took that if any information contained in the undertaking is found to be misleading their candidature could be cancelled at any stage; that the logic behind the Recruitment of Police Constable in BS-05 with certain qualification for regional quota basis is a policy matter thus indulgence of this Court is not required; that there is no discrimination meted out with the Petitioners; that there is reasonable classification protected under the law and the Constitution, thus out of purview of Article 199 of the Constitution; that Petitioners did not qualify the terms and the condition as set forth in the advertisement as well the NTS Registration Form. He lastly prayed that the instant petitions may be dismissed.

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

7. First of all we take up the issue of the maintainability of the instant Petition under Article 199 of the Constitution. We are of the view that the grievance of the Petitioner does not relate to the terms and conditions of service, but they have sought relief of appointment, therefore the Petition is not barred by Article 212 of the Constitution and is maintainable to be heard and decided on merits.

8. The primordial questions raised in the present proceedings are as under:-

- i) Whether the Petitioners possess the required qualifications for the post of police Constable BS-05 in Sindh Police as per recruitment Rules?**
- ii) Whether the condition of academic qualification i.e. Matric from any Board of Secondary Education located in Sindh is ultra-vires to the provision of the Constitution?**

09. To address the first proposition, we have to look at the matter in its entirety. Perusal of the record reflects that the Respondent-Police department initiated the process of recruitment of vacancies of Police Constables in BS-05 to be filled on merit on the regional quota basis, particularly for Karachi Range. Record further reflects that in National Testing Service Petitioners were declared successful candidates for the post of Police Constable. We have gone through the press release dated 28.1.2017 (Team-14),

which prima facie show that the names of the Petitioners were appearing as successful candidates. Respondents in their comments have not denied that the petitioners do not possess the qualification for the post applied for, but the only reason which has been put forward is that the petitioners did not have the qualification from any Board of Secondary Education located in Sindh, per Respondents, that's why they have been declared ineligible for the post of police constable BS-05, therefore this issue is not contested by the Respondents.

10. The Second proposition is hotly contested by the parties. To appreciate the controversy in its proper perspective, we think it appropriate to have a glance on the term "qualification" It is, therefore, necessary, in the first instance, to understand the meaning of the word 'Qualification' from various sources: -

(i) "a pass of an examination or an official completion of a course, especially one conferring status as a recognized practitioner of a profession or activity."

(ii) "a condition that must be fulfilled before a right can be acquired; an official requirement."

11. Having considered the dictionary meanings of the word 'Qualification' and the interpretation given to it by the Superior Courts in the different judgments noted hereinabove, we intent to resolve the issue and seek guidance from the parent statute i.e. Sind Civil Servants Act, 1973 and Sind Civil Servants (Appointment, Promotion and Transfer) Rules, 1974.

“The Rule 12- (1) provides as under: - A candidate for appointment by initial recruitment must possess the educational qualifications and experience and be within the age limit laid down for that appointment.

Rule 14- says that the Vacancies in the under mentioned posts shall be filled on Provincial basis, in accordance with the merit and regional or district quota as determined by Government from time to time. (i) Posts in Basic Scales 2 [16] and above; (i) Posts in Basic Scales 3 to 15 in offices which serve only the whole Province.

Rule15- provides that the Posts in [Basic Scales 3 to 15 in offices which serve only a particular region or district shall be filed by appointment of persons domiciled in the region or district concerned.”

12. Let us shed light on the policy for recruitment of constables in Sindh Police-2016. Per learned AAG the same has been framed and approved under the directives of the Hon’ble Supreme Court of Pakistan in Civil Petition for leave to appeal No. 634-K of 2016, 6345-K of 2016 and 644-K of 2016 to 646-K of 2016 vide order dated 26.12.2016.

Policy No. 4.1.6 provides as under:-

“Candidates who meet following eligibility criteria will be considered for the recruitment as Constable in any of the executive establishment of Sindh Police”

Age	Educational qualification	Height (minimum)	Chest (male candidate only)
		Male / Female	
18-25	Matriculation	5-5” / 5	33-Min with 1.5” expansion

“Only those candidates will be eligible to apply who are domiciled of the concerned districts. No candidate shall be considered in any other district except in the district of domicile/ PRC. Furthermore, candidate applying for the recruitment must have completed matriculation from any Board of Secondary Education located in Sindh only.”(Emphasis added)

13. The aforesaid Recruitment Rules clearly depict that the post of police Constable in BS-05 in all units of Sindh Police can be filled in the aforesaid manner.

14. Upon perusal of the order dated 26.12.2016 passed by the Hon'ble Supreme Court of Pakistan in the aforesaid matters has held as under:-

“ The Sindh Government has submitted report containing the proposal for consideration the reinstatement/ appointment of the Respondents in Civil Petitions No. 634-K of 2016, 635-K of 2016, 644-K of 2016, 645-K of 2016 and 646-K of 2016. The Respondents are represented by the learned counsel present in Court. The proposed policy is reproduced as under:-

“1. A Centralized Re-examination Committee may be constituted headed by an officer of the rank of Addl. IGP/DIGP to supervise re-examination process.

2. All candidates who were irregularly appointed during year 2012 to 2015 and subsequently dismissed/discharged from service may be directed to appear in re-examination test. Such opportunity should be widely published in three leading national daily newspapers.

3. The Re-examination should be done by a following all steps adopted for recruitment of Constable in the years 2016 in Sindh Police in the light of Recruitment Policy 2016 issued vide No. EB-III/T.7/S&S/14805-60 dated 04.08.2016 (Copies enclosed) All physical test will be conducted under the supervision of the Re-examination Committee with same eligibility criteria for recruitment of Constables in 2016 and Written Test will be conducted by NTS. However, following exemptions may be granted.

- i) **Age of the candidates will be determined on the basis of closing date of application when they were actually recruited.**
 - ii) **The Centralized Re-examination Committee may decide the exemption/leniency of running test to the deserving cases after recording specific reasons.**
4. *The existing policy for the domiciles of candidates derived from Rule 15 of Sindh Civil Servants (APT) Rules, 1974 may be followed during re-examination.*
 2. *In additional to the aforesaid policy, they have submitted a statement modifying the language of sub-Clause-Ii of Clause 3 of the Policy, which is reproduced as under:-*

“The Centralized Re-examination Committee may grant the exemption of running test to those candidates, who were injured or suffered from any medical problem during their service in Police department.”
 3. *The Advocate General, Sindh on instructions states that re-examination criteria by the Committee will be identical to that of Policy for Recruitment of Constables in Sindh Police framed by the Sindh Police and approved by the Sindh Police Management Board. It is further stated that each and every clause of the policy would be applicable to the Respondents for the purposes of their eligibility, qualifications and physical test. The Respondents have no objection and consent to the disposal of these proceedings in terms of the aforesaid arrangement proposed by the Sindh Government.*
 4. *All these petitions are converted into appeal and allowed in the aforesaid terms.*

5. ***The learned Advocate General, Sindh states that Centralized Re-examination Committee shall be headed by Sanaullah Abbasi, Additional Inspector General of Police and the members of the Committee shall comprise of two officers for the rank of DIG and two officers of the rank of SSP. Recruitment process shall be initiated after advertisement given in the widely published newspapers of English, Urdu and Sindh. This recruitment will be confined only to the police personnel, who were employed form 2012 to 2015 and were dismissed/discharged or removed from service. No any other candidate shall be part of this. This entire process shall be completed within three(03) months from today and a compliance report shall be submitted by the Inspector General of Police to the Office Incharge Assistant Registrar of this Registry for our perusal in Chambers.***

15. We have also perused the decision dated 29.07.2016 taken by the Recruitment Committee in the following manner:-

“A meeting regarding policy for recruitment of Constables in Sindh is held on 29.07.2016 to review the Recruitment Policy already issued vide No. 9201-89/EB-III/I-7/S&S dated 25.05.2016. Following decisions were taken during the meeting.

- i. **Para 4.1.4 of the Recruitment Policy should be amended as follows:-**
- “4.1.4 of Constitution of Recruitment Committee:**
- a) **The Chairman of the Committee shall be an officer not below than the rank of DIGP to be nominated by the IGP.**
- b) **The Committee shall comprise of two officers of the rank of SSP or SP, to be nominated by the IGP.**
- c) **Representative of Pakistan Army to be nominated by 5 Corps (to the extent of Physical Test only).**

- d) **Representative of CPLC, to be nominated by Chief of CPLC (for Karachi Range only)."**
- ii. **In para-4.1.6 of the Recruitment Policy, the required age for Constables (BS-05) in any of the executive establishments of Sindh Police may be read as 18-28 years instead of 18-25 years.**

Sd/-
(ALLAH DINO KHOWAJA)
 PPM & BAR, PSP
 INSPECTOR GENERAL OF POLICE
 SINDH KARACHI.

Sd/-
(SANAULLAH ABBASSI) PSP
 ADDL: INSPECTOR GENERAL OF
 POLICE
 CTD SINDH, KARACHI

Sd/-
(MUSHTAQ AHMED MAHAR)PSP
 ADDL: INSPECTOR GENERAL OF
 POLICE
 KARACHI RANGE

Sd/-
(KHADIM HUSSAIN BHATTI)PSP
 ADDL: INSPECTOR GENERAL OF POLICE
 TRAFFICE SINDH KARACHI

16. From bare perusal of the decision of the Hon'ble Supreme Court as discussed supra and the Recruitment Policy as well as provisions of Sindh Civil Servants Act and Rules framed thereunder, it is abundantly clear that the Recruitment Committee has imposed restriction upon the candidates on their own accord that the candidates must have completed matriculation from any Board of Secondary Education located in Sindh only to be eligible for the aforesaid post of Constable. The Respondent-Police Department has only made amendment in para 4.1.6 of the Recruitment Policy to the extent of age of candidates from 18-25 years.

17. In view of the imposition of the condition in the preceding para, we are of the considered view that education is a

fundamental right of the citizens, including the Petitioners and no one can be deprived of such right.

18. Article 27 of the Constitution provides Safeguard against discrimination in services, which provides as under:-

“27(1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth.

Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex.

(2) Nothing in clause(1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province, for a period not exceeding three years, prior to appointment under that Government or authority.”

19. The Constitution of Pakistan confers upon this Court power and jurisdiction under Articles 199 to examine the constitutionality of the executive actions. We are fortified by the decisions rendered by the Honourable Supreme Court of Pakistan in the case of Mehram Ali Vs. Federation of Pakistan (PLD 1998 SC 1445), Liaqat Hussain v. Federation of Pakistan (PLD 1999 SC 504) Civil Aviation Authority v. Union of Civil Aviation Employees (PLD 1997 SC 781), Elahi Cotton Mills Ltd. v. Federation of Pakistan (PLD 1997 SC 582), Pir Sabir Shah v. Shad Muhammad Khan (PLD 1995 SC 66), Federation of Pakistan v. Shaukat Ali Mian (PLD 1999 SC 1026), Wattan Party v. Federation of Pakistan

Const. Petition No. 77 of 2012 37 (PLD 2006 SC 697), Muhammad Mubeen-us-Salam v. Federation of Pakistan (PLD 2006 SC 602), Muhammad Nasir Mahmood v. Federation of Pakistan (PLD 2009 SC 107), Dr. Mobashir Hassan (supra) and All Pakistan Newspapers Society v. Federation of Pakistan (PLD 2012 SC 1).

20. It may be noted that exercise of jurisdiction by this Court also includes enforcement of Fundamental Rights enshrined under Articles 9 to 28 Chapter 1 of Part II of the Constitution read with Article 199. Reference may be made to the case of Dr. Mobashir Hassan's supra, wherein following observations have been made by the Honorable Supreme Court: -

“85. Essentially, the above guidelines/directions for expeditious disposal of cases were issued by this Court, in exercise of its powers under Article 187 of the Constitution, which provides that Supreme Court shall have power to issue such directions, orders or decrees, as may be necessary for doing complete justice in any case or matter pending before it, including an order for the purpose of securing the attendance of any person or the discovery or production of any document. This Article of the Constitution has been interpreted in so many cases. However, reference is being made only to Sabir Shah's case (PLD 1995 SC 66). Relevant para. therefrom is reproduced hereinbelow for convenience:- “10. The Supreme Court is the apex Court. It is the highest and the ultimate Court under the Constitution. In my view the inherent and plenary power of this Court which is vested in it by virtue of being the ultimate Court, it has the power to do complete justice without in any manner infringing or violating any provision of law. While doing complete justice this Court would not cross the frontiers of the Constitution and law. The term "complete justice" is not capable of definition with exactitude. It is a term covering variety of cases and reliefs which this Court can mould and grant depending upon the facts and circumstances of the case. While doing complete justice formalities and technicalities should not fetter its power. It can grant ancillary relief, mould the relief within its jurisdiction depending on the facts and circumstances of the case, take additional evidence and in appropriate cases even subsequent events may be taken into consideration. Ronald Rotunda in his book "Treatise on Constitutional Case Substance" (Second Edition), Volume 2 at page 90 has stated that "The Supreme Court is an essence of a continual

Constitutional convention". The jurisdiction and the power conferred on the Supreme Court does empower it to do complete justice by looking to the facts, circumstances and the law governing a particular case. Article 187 does not confer any jurisdiction. It recognizes inherent power of an apex Court to do complete justice and issue orders and directions to achieve that end. Inherent jurisdiction is vested in the High Court and subordinate Courts while dealing with civil and criminal cases by virtue of provisions of law. The inherent jurisdiction of this Court to do complete justice cannot be curtailed by law as it may adversely affect the independence of judiciary Const. P. No. 77 of 2012 42 and the fundamental right of person to have free access to the Court for achieving complete justice. This enunciation may evoke a controversy that as Article 175(2) restricts Article 187 it will create conflict between the two. There is no conflict and both the Articles can be read together. The conflict in the provisions of the Constitution should not be assumed and if apparently there seems to be any, it has to be interpreted in a harmonious manner by which both the provisions may co-exist. One provision of the Constitution cannot be struck down being in conflict with the other provision of the Constitution. They have to live together, exist together and operate together. Therefore, while interpreting jurisdiction and power of the superior Courts one should look to the fundamental rights conferred and the duty cast upon them under the Constitution. A provision like Article 187 cannot be read in isolation but has to be interpreted and read harmoniously with other provisions of the Constitution. In my humble view, this Court while hearing appeal under a statute has the jurisdiction and power to decide the question of vires of the statute under which the appeal has arisen and can even invoke Article 184(3) in appropriate cases."

21. The learned counsel for the Petitioners have vehemently contended that the condition i.e. "**Metric or above from any Board of Secondary Education located in Sindh only**" imposed by the Respondent-Police department in the impugned Advertisement is designed to achieve a particular object and the same falls within the purview of targeted or perceived aim. Be that as it may, we are not travelling into that controversy and confine ourselves to the extent of legality and propriety of the condition imposed by the Respondent-Police Department.

22. In view of the foregoing legal position, we are of the considered view that the Government having the domain to frame the policy of appointment and also provide the qualification for appointment against a particular post and thus, appointment against such post through initial appointment or otherwise cannot be claimed without fulfillment of the criteria and the requisite qualifications as provided under the Recruitment Rules as discussed supra, however the case of the Petitioners is quite different as they have already been declared successful candidates in written test and interview for the post of Police Constable, in Sindh police and they were directed to get themselves medically examined, but their candidature has been rejected on the premise that they do not possess the educational qualification from educational Board located in Sindh, which condition is impugned in the present proceedings.

23. Upon examination of Articles 9, 25 and 27 of the Constitution, these Articles do not permit the Respondents to impose a condition of a particular regional qualification, which may bar right of access to obtain service in Government department, which is a fundamental right. We are of the considered view that Right to obtain education cannot be restricted to have educational Degree from particular region or Area of District or Province.

24. Learned AAG thus in our view has failed to justify the impugned action of the official Respondents.

25. In view of the foregoing legal position, we are of the considered view that the condition imposed by the Respondent-Police department in the Advertisement dated 29.10.2016 is not supported by any law. The condition i.e. **“Metric or above from any Board of Secondary Education located in Sindh only”** imposed by the Recruitment Committee under policy for Recruitment of Constable in Sindh Police is required to be revisited by the Competent Authority and the same shall be done in accordance with the law and Constitution.

26. In result of foregoing discussion, we dispose of the instant petitions, with directions to the Inspector General of Police, Sindh to scrutinize the candidature of the Petitioners for the post of Police Constable in BS-05 and if the Petitioners are found fit to be admitted as police constable in Sindh Police, their cases may be processed strictly in accordance with the Recruitment Rules for the aforesaid post within a period of one month from the date of communication of this judgment and submit compliance report through MIT-II of this Court.

27. The listed application(s) are also disposed of accordingly.

JUDGE

JUDGE

Shafi Muhammad P.A