

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

C.P. No.D-371 of 2019

Present

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Asif Ali & othersPetitioners

Vs.

Province of Sindh through
Secretary Home Department & othersRespondents

Date of hearing 05.03.2019

Mr. Abdul Ghaffar Malik, Advocate for petitioners.

ORDER

ADNAN-UL-KARIM MEMON-J: - In the above captioned petition, petitioners are seeking declaration to the effect that they being eligible candidates are fit for appointment as Police Constable (BPS-05) in Sindh Police Department against son quota, in view of Standing Order No. 279/2014, with further prayer to direct the respondents to issue appointment orders in their favour.

2. The gist of the case of petitioners is that the fathers of petitioners were working in Police Department, Government of Sindh; that the office of Inspector General of Police, Sindh issued Standing Order No.279/2014 dated 09.06.2014 for recruitment against Shaheed Quota and son quota for (the children of deceased, invalidated on medical grounds, retired and in service police officers/men); that on the basis of aforesaid standing order, the case of petitioners were recommended for the aforesaid posts but now they are reluctant to issue offer orders to the petitioners on the post of police constables.

3. Mr. Abdul Ghaffar Malik learned counsel for the petitioners has argued that petitioners are sons of retired employees of Police Department who were working on different posts; the petitioners being eligible for the post of Constables in Police Department applied on the basis of son quota in compliance of Standing Order No.279/2014 issued by the office of respondent No.2, the petitioners appeared in written test as well as in physical test conducted by the committee, constituted by the respondents, whereby the petitioners were declared successful cum eligible/fit candidates for appointment as Police Constable (BPS-05). He further argued that merit list of the candidates was prepared and

submitted together with recommendation to respondents No.1 and 2 but they have withheld the appointment orders of the petitioners without any rhyme and reason; He next asserted that the respondents are intending to make fresh appointments of their favorites in the place of petitioners by ignoring the merits/quota of the petitioners, who have qualified for the post applied for. He next contended that the petitioners have a vested right to claim appointment as Police constable in Sindh Police as they have met the requisite criteria, qualified the test and fulfilled other formalities as required under the law; Per learned Counsel, the appointment orders cannot be withheld or kept in abeyance by the respondents. He next argued that the respondents have no legitimate right either to cancel the process of appointment of police constables on the basis of Standing Order or withhold the same; He next added that the respondents are not acting in accordance with law and have violated the fundamental rights of the petitioners by not issuing the appointment orders to the petitioners as Police Constable; He lastly contended that the Standing Order No.279/2014 was taken into consideration by this Court in Constitutional Petition NO.D-170/2015, whereby this court allowed the Petition vide order dated 26.05.2016 and directed the respondents to appoint them in Police Department on son quota as recommended by the committee. It is further added by him that the order dated 26.05.2016 passed by this court was impugned before the Honorable Apex Court in Civil Petition No.-652-K of 2016 and the Honorable Supreme Court vide order dated 17.08.2017 dismissed the Civil Petition of the Government of Sindh, whereby the decision of this Court was maintained. He prays for allowing the instant petition. The petitioners being aggrieved by and dissatisfied with the in-action of the respondents have approached this Court under Article 199 of the Constitution.

4. We have asked from learned counsel for the petitioners that how this petition is maintainable in view of decision rendered by Honorable Supreme Court in the case of Gul Hassan Jatoi and others Vs. Faqeer Muhammad Jatoi & others (2016 SCMR 1254) and has argued that the Honorable Supreme Court has not declared the subject Standing Order as null and void.

5. The primordial question in the subject petition is, whether the petitioners can claim appointment as Police Constable under Standing Order No.279/2014 for their recruitment against Shaheed Quota & Son quota, which has not been approved by the Provincial Government under Section 12 of the Police Act, 1861.

6. Record reveals that office of Inspector General of Police Sind Karachi vide order dated 09.06.2014 issued Standing Order No.279/2014 notifying the

recruitment in Sindh Police against Shaheed Quota, Son Quota (children of deceased, invalidated on medical grounds, retired and in-service police officers/men). We have noted that Standing Order issued by Inspector General of Police was under Section 12 of Police Act, 1861 but it was without approval of the Provincial Government, and the same has no legal status. To rebut the said assertion, no argument has been advanced by the learned counsel for the petitioners.

7. The relevant portion of Section 12 of Police Act, 1861, is reproduced as follows:-

“12. Power of Inspector-General to make rules: The Inspector-General of Police may, from time to time, subject to approval of the [Provincial Government], frame such orders and rules as he shall deem expedient relative to the organization, classification and distribution of 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 necessities 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.”

8. A perusal of above provision of law 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 recruitment, organization, classification and distribution of police force. In other words the aforesaid provision enables the Inspector General of Police to cater for 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 Honorable Supreme Court rendered in the case of Gul Hassan Jatoi (supra) in which Honorable Supreme Court has held that Standing Orders issued by Inspector General of Police has to be approved by the Provincial Government. Admittedly, the subject Standing Order has not been approved by the Provincial Government, therefore no sanctity can be attached with the Standing Order No.279/2014 to claim benefit out of it.

9. Reverting to the main point raised by learned Counsel for the petitioners that Standing Order No.279/2014 is still in force and has yet been not been cancelled and this Court vide order dated 26.05.2016 in C.P.No.170/2015 relying upon the Standing Order No.279/2014 directed the respondents to appoint the petitioners in Police Department on son quota as recommended by the committee

concerned. We may say that recently the Honorable 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, thus the order passed by this Court cannot be cited as precedent as the Honorable Supreme Court subsequently has declared all the Standing Orders without approval of the Government as illegal, therefore the petitioners cannot take resort to the Standing Order No.279/2014 to claim appointment as Police Constable. This is the prerogative of the Provincial Government to make appointment/ recruitment in police department through publication in the newspaper and in transparent manner.

10. Admittedly, the petitioners have not been declared successful candidates on merit, therefore, they cannot claim issuance of appointment letters as a matter of right. The recommendations of the petitioners', if any, made by the respondents being in violation of law cannot be given sanctity. Even otherwise, the same powers are subject to approval of the Government. Moreover Rule-11-A of Sindh Civil Servant (Appointment, Promotion, Transfer Rules-1974) provides complete mechanism for appointment against son quota. The relevant portion of Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and 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.”

11. In view of the above, it is crystal clear that the respondents cannot circumvent the law to make recruitment against son quota by issuing Standing Order for recruitment in Sindh Police against Shaheed Quota, Son Quota without approval of the Provincial Government.

12. In the light of above discussion, the instant constitutional petition is found meritless is dismissed in limine along with pending application(s).

JUDGE

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