

IN THE HIGH COURT OF SINDH AT KARACHI

Present.

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-2533 of 2019

Asif Ali

V/s

Province of Sindh & 03 others

Date of Hearing: **16.04.2019**

Date of Order: **16.04.2019**

Mr. Ghulam Shabbir Pathan, Advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J:- Petitioner is seeking declaration to the effect that the appointment of the Petitioner dated 19.8.2014 as Police Constable in BPS-05 under `Shaheed quota` is erroneous. Petitioner further seeks declaration that he is eligible and fit candidate for appointment as Assistant Sub Inspector (ASI) BPS-09 in Sindh Police Department, on the basis of `Shaheed quota`.

2. The facts of the case of Petitioner are that the father of the Petitioner was working in Sindh Police Department as ASI and during service; he passed away on 18.8.2014, as he was attacked by unknown assailants. Petitioner added that on 19.08.2014, he was appointed as Police Constable in BPS-05 under Shaheed quota vide Standing Order No.279/2014. Petitioner has added that on 20.02.2015, Respondent-Inspector General of Police, Sindh Karachi (IGP) declared the father of Petitioner as Shaheed and recommended for financial benefits/compensation, in favour of the

family of the Shaheed, amounting to Rs.200000/- as per policy of the Government notified vide Finance Department No.FB(SR-III) 10(06)/2006 dated 20.05.2009 and the same was paid accordingly vide letter dated 23.05.2015 issued by the Government of Sindh, Police Department. Petitioner has submitted that he applied for the post of Assistant Sub-Inspector in the Police Department on Shaheed quota vide applications dated 29.8.2016 & 28.11.2018. The case of Petitioner was referred to the Additional Inspector General of Police vide letters dated 05.5.2016 & 28.11.2018 but nothing has been done. Petitioner, being aggrieved by and dissatisfied with his non-selection on the post of ASI on Shaheed quota, has approached this Court on 03.04.2019.

3. We enquired from the learned counsel for the Petitioner how this Petition is maintainable for his appointment as Assistant Sub-Inspector in Sindh Police under Shaheed quota, more particularly in view of the un-reported order dated 26.6.2018 passed by the Hon'ble Supreme Court in C.P No.675-K of 2017, whereby the order dated 30.10.2017 passed by this Court in C.P No.D-6221/2015 was maintained. For convenience sake, an excerpt of the order is reproduced as under:-

“Petitioner claims to have appeared before the Sindh Public Service Commission to compete for the post of ASI. He claims to have qualified the written test but was declined candidature vide impugned letter dated 25.09.2014 on the ground *inter alia* that he is over age by eight years and eleven months as on the cutoff date i.e. 11.07.2011. The learned Bench of the High Court sized of the matter and dismissed the petition vide impugned order dated 30.10.2017. Initially learned counsel attempted to argue that the petitioner is entitled for the son's quota as his father passed away in October 1988 in a natural death. Though the petitioner claims that he was required to avail the son's/Shaheed quota vide letter dated 18.10.2001. Learned counsel concedes that the petitioner does not fall under the category of Shaheed Quota. There is nothing on record nor the learned counsel is able to show any progress was made in this regard. After almost six years, the petitioner once again applied for appointment vide application dated 01.06.2006, which application was forwarded to CPO on 06.06.2006. It appears that the petitioner was required to appear in a screening test, prior to written examination vide call letters dated 11.06.2013, 25.04.2014 and 24.07.2014 respectively. However, through impugned letter dated 25.09.2014 on the ground *inter alia* being over aged by 08 years, 11 months & 10 days, and he does not possess 2nd class intermediate

degree. Learned counsel seeks to rely on order dated 26.12.2016 passed in Civil Petition No.634-K of 2016 titled as *Deputy Inspector General of Police Larkana Ranger & others Versus Abdul Hafeez Kalwar and other connected petitions*, order relied upon has no nexus with the present controversy. The said case relates to candidates who were irregularly appointed during 2012 to 2015 and later dismissed. Sub re-induction was done under policy and through centralized re-examination committee.

2. Petitioner's case was fully considered by the High Court through well-reasoned impugned judgment. Learned counsel was unable to persuade us that the petitioner is eligible and/or entitled to any relaxation or concession when appointment is claimed per eligibility and qualification in terms as notified in the advertisement, accordingly, leave is declined and the petition is dismissed."

4. Mr. Ghulam Shabbir, learned counsel for the Petitioner has argued that the Petitioner is entitled for the post of ASI on the basis of Shaheed quota; that the Respondent-Police Department is not issuing the appointment order for the aforesaid post with malafide intention; that the Petitioner has been persistently pursuing the Police Hierarchy for his appointment as ASI on Shaheed quota. Learned counsel raised point of discrimination and argued that on 24.6.2016 & 29.3.2018 the Respondent-Police Department issued appointment orders for the post of Assistant Sub-Inspector (BPS-9) in Karachi Range under Shaheed Quota (available at page No.61 to 65) and argued that the Competent Authority i.e. Chief Minister Sindh allowed recruitment of legal heirs of Shaheed ASI and above the post of ASI waiving-off the Selection criteria from Sindh Public Service Commission vide letter dated 27.4.2016 in favour of candidates namely Syed Arslan Babar, Shahbaz Khalid and PC Syed Haseeb Ahmed on the basis of Shaheed quota. Today, learned counsel has filed statement dated 16.4.2019 showing the appointment orders of Assistant Sub Inspectors issued under Shaheed quota in favour of the candidates namely Muhammad Tufail, Hafiz Syed Adnan Ahmed and Dilawar Khan, the statement is taken on record.

5. We posted another question to him under what law the IGP Sindh has issued the appointment orders in favour of the

candidates? The learned counsel is unable to quote any law on the subject to empower the IGP Sindh to appoint legal heir of Shaheed under Shaheed quota. However, he submitted that Petitioner is also entitled to be appointed to the post of ASI on the basis of Shaheed quota and he 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 grave injustice has been done with the Petitioner with no fault on his part by depriving him for his appointment to the post of ASI, for which he is qualified and eligible; that due to such acts and deeds of the Respondents, the Petitioner has suffered a lot of 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 fundamental and legal rights of the Petitioner, as guaranteed under the Constitution of Islamic Republic of Pakistan 1973 that are enforceable by this Court in exercise of its Constitutional jurisdiction. He lastly prays for allowing the instant Petition.

5. We have heard learned counsel for the Petitioner on the maintainability of the instant Petition and perused the material available on record.

6. Important questions of law involved in the subject Petition are as follows:

- i) Whether Petitioner can claim appointment as Assistant sub Inspector of Police against Shaheed Quota under Standing Orders issued by Inspector General of Police, Sindh under Section 12 of the Police Act-1861?**
- ii) Whether the post of Assistant Sub-Inspector of Police can be filled through Sindh Public Service Commission under Section 7 (3) of Police Order, 2002(since repealed) or Police Rules, 1934?**
- iii) Whether qualification that is, age and Physical Standard for appointment on the post of Assistant sub Inspector of Police can be relaxed?**

- iv) **Whether father of the Petitioner has been declared Shaheed on the basis of which he can claim appointment under Shaheed Quota as provided in Rule 11-A of the Sindh Civil Servants (Appointment, Transfer and Promotion) Rules, 1974?**

7. We have noticed that posts of ASI are to be filled through competitive process and not otherwise, requiring following qualification etc. as under:

AGE:

Min: 18, Max 28 years for direct Recruitment.

Min: 1, Max 33 years for Graduate constable & Head constable.

QUALIFICATIONS:

- i. *Intermediate with 2nd Division from any recognized Board/ University for General Recruitment.*
- ii. *For In-Service head Constable/Police Constables of Sindh Police Department, candidate should be Graduate.*

PHYSICAL STANDARD

A candidate must be in good mental & physical health and should fulfill the following conditions:

Male **Height 5 X 5" (minimum)**
Chest 33 X 34 ½ (minimum)

Female: **Height 5 X 2" (minimum)**
Sound Health

Note:

"No relaxation in age, education or physical standard will be allowed to the candidates for direct recruitment.

8. Admittedly Petitioner has not applied for the post of ASI (BPS-09) as fresh candidate through Public Notice. It is settled principle of law that no relaxation in age and qualification can be given. Only those candidates can be appointed who meet the requisite criteria. In this regard, our view is supported by Rules 12.6 and 12.15 of Police Rules, 1934.

9. In order to clarify the legal position that has emerged in the present case we first take up legal issue of appointment in Sindh Police through Standing Order No. 279/2014 issued by the Inspector General of Police, Sindh.

10. It has been agitated by the learned counsel for the Petitioner that under the Standing Orders issued by the Inspector General of Police appointment on the post of ASI on Shaheed Quota can be made without resorting to Sindh Public Service Commission. In our view, 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 until and unless the same are approved by the Sindh Government. The Office of Inspector General of Police, Sindh, 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). Apparently, the said Standing Order has not been approved by the Sindh Government as required under Section 12 of Police Act, 1861.

11. 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 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.”

12. Section 12 of the Police Act, 1861 reproduced supra leaves no room or ambiguity as to the fact that police force is commanded by Inspector General of Police, who has powers to frame Orders and Rules with regard to recruitment, organization, classification and distribution of Police Force subject to the approval of the Provincial Government. In other words, the aforesaid Provision enables Inspector General of Police to cater to a situation where it is expedient for him to issue such orders and make such rules as required to meet the contingencies with approval of the Provincial Government.

13. We are fortified, on the aforesaid issue by the judgment rendered in the case of *Gul Hassan Jatoi* (supra) and *Mohammad Nadeem Arif & others vs. IGP Punjab, Lahore & others* [2011 SCMR 408] in which Hon'ble Supreme Court has held that the Standing Orders issued by Inspector General of Police have to be approved by the Provincial Government.

14. To elaborate further on the aforesaid proposition, we reproduce Section 7 (3) of Police Order, 2002 (since Repealed by The Sindh (Repeal of the Police Order 2002 and revival of the Police Act 1861) Act, 2011) 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.”

15. Having elaborated on the aforesaid proposition, now we take up Rule-10-A & 11-A of Sindh Civil Servant (Appointment, Promotion and Transfer Rules, 1974), published on 01.09.2011 were as follows:-

“10-A. Notwithstanding anything contained in these rules, where a civil servant dies while in service or is declared invalidated or

incapacitated for further service, one of his unemployed children or, as the case may be widow (when all the children of the deceased employee are minor) may be employed against a post meant for initial appointment in BPS-16 and 17 for which he/she possess the minimum qualifications prescribed to that post:

Provided that such child or widow may be given ten additional marks in the aggregate by the Sindh Public Service Commission or the appropriate Selection Board or Committee, if he or she otherwise qualifies the test, examination or interview;

Provided further that a person who may have applied under this rule and qualifies purely on merit shall not be awarded any additional marks and his selection shall be made on merit and not under this rule.

Provided further that the cut of date shall be within two years of the death of the officer or official.

11-A. Where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his/her children or, as the case may be, widow (when all the children of the deceased employee are minor) shall be provided job who applies within a period of two years of death or declaration of invalidity of incapacity of civil servant on any of the basic pay scales No.1 to 15 in the Department where such civil servant was working;

Provided that such appointment shall be made after fulfillment of formalities as required in the requirement rules and holding interview, for the post applied for; provided further that the cut of date shall be within two years of the death of the officer or official”

Third proviso of Rule 10-A as well as second proviso of Rule 11-A, specifically provides cutoff date for making of application for appointment under the deceased employees quota within 2 years of the occurrence of death of the Government Official. Through a further Notification dated 16.09.2014, two further provisos were added in Rule 10-A and 11-A and they are as follows:-

“1. Under Rule 10-A after third proviso, the following fourth proviso shall be added:-

“Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be deprived of the benefit accrued to him under Notification dated 11.03.2008 and 17.07.2009 of these rules.”

2. Under Rule 11-A, after second proviso, the following third proviso shall be added:-

“Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be deprived of the benefit accrued to him under Notifications dated 11.03.2008 and 17.07.2009 of these rules”

16. The Honorable Supreme Court in C. P. No. 482-503-K of 2016 vide order dated 10.08.2016 has held that the above two provisos added by Notification dated 16.09.2014 omit the

application of Notifications dated 11.03.2008 and 17.07.2009 to those candidates under the above quota whose right of employment has already occurred. In Notification dated 17.07.2009, the cutoff date for making application for employment under the above quota was provided as 17.07.2009. It is clear from Notification dated 16.09.2014 that the clog of two years for making application for employment under the deceased quota for the children who have already applied for employment prior to making of this rule, was done away.

17. We have noticed that the Provincial Assembly promulgated Sindh Shaheed Recognition and Compensation Act, 2014 (Sindh Act No. XVI of 2014) published in Sindh Government Gazette on 11.06.2014. We have seen that the case of Petitioner for the post of ASI does not fall within the ambit of definition clause (f) of Section 2 and section 3 (5) of said Act, therefore, Petitioner cannot claim for the aforesaid appointment as a matter of right. 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.”

18. We may observe that Sindh Civil Servants Act, 1973 is an act of general application while Police Act, 1861 is of special application to the officers of subordinate rank of Police Force. The same goes with the rules. Therefore, Petitioner cannot take resort

of either Standing Orders or Sindh Civil Servants Act, 1973 and Rules framed there under to claim appointment to the post of ASI. Reliance is safely placed upon the case of Inspector General of Police, Punjab, Lahore another vs. Mushtaque Ahmed Waraich and others (PLD 1985 SC 159).

19. In the light of above discussion, it is crystal clear that Sindh Government /Police Department cannot circumvent the law to make recruitment to the post of ASI on the basis of Son/Shahed quota by issuing Standing Orders or by invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and Sindh Shahed Recognition and Compensation Act, 2014 by relaxing the requisite qualification for appointment in the disciplinary force. The appointment of ASI can only be made through competitive process on merit.

20. In view of what has been discussed above, the instant Constitutional Petition is dismissed in *limine* along with pending application[s]. Let a copy of this order be communicated to the Chief Secretary, Government of Sindh and the Inspector General of Police for communication and necessary compliance.

JUDGE

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