

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

C.P. No.D-77 of 2015.

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon.

Rasheed Ahmed ----- Petitioner

Vs.

The Province of Sindh & others ----- Respondents

Date of Hearing: 19.03.2019

Mr. Altaf Sachal Awan, advocate for the petitioner.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. - The instant petition alongwith other connected petitions was disposed of vide order dated 13.10.2016 with the following observations:-

“6. In view of the notification referred supra, by consent of the parties, all the above cited Constitution Petitions and contempt applications stand disposed of. It is made clear that the petitioners in all the captioned petitions will move their fresh applications along with all the requisite attested documents to the Chairman/ Chief Secretary, Government of Sindh, Karachi, within four weeks and the Committee shall examine all the cases individually and decide the applications of the petitioners within four months by affording proper opportunity to the petitioners and after completing all the codal formalities strictly in accordance with rule 11 (A) of Sindh Civil Servants (appointment, promotion and transfer) Rules, 1974 as well as Government policy in vogue. In case, the Committee fails to decide the applications submitted by the petitioners within the stipulated period, petitioners would be at liberty to file contempt applications against Chairman of subject committee/ Chief Secretary before this Court for redressal of their grievances. Above disposal of the petitions and contempt applications are subject to the decisions/ judgment of the Honorable Supreme Court of Pakistan or High Court of Sindh on the subject controversy, wherein, the effect or implementations of the above Notifications would have been examined and decided otherwise. Copy of this order may be transmitted to the Chief Secretary, Government of Sindh, Karachi as well as Additional Advocate General, Sindh, for information and strict compliance. Compliance report shall be submitted through Additional Registrar of this Court.”

2. On 27.04.2018, Applicant filed application (MA No.5880 of 2018) under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 for initiating contempt proceedings against the alleged contemnors for their willful defiance of the order passed by this court.

3. Mr. Altaf Sachal Awan, learned counsel for the applicant has argued that the respondents are not complying with common order dated 13.10.2016 passed by this court; that the Public functionaries had to reinforce good governance, observe rules strictly and adhere to the rule of law in public service. However, the non-implementation of the order on the part of respondents is an injury to those believing in constitutionality and rule of law and amounts to thwarting administration of justice. Learned counsel prayed in the contempt petition that this court may proceed against the respondents for committing contempt of Court.

4. On the other hand, Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh has submitted that in compliance with the order passed by this Court report has been furnished which shows that the compliance of the order passed by this Court has been made in its letter & spirit.

5. We have heard learned counsel for the parties on the listed application and perused the material available on record.

6. Important question of law involved in the subject application is that, whether Petitioner can claim appointment as constable of Police against Son/Shahed Quota under Standing Orders issued by Inspector General of Police, Sindh under Section 12 of the Police Act-1861?

7. We have noted that posts of constable can be filled in the following manner:-

“AGE: Min: 18, Max 28 years for direct Recruitment.

QUALIFICATIONS:

i. 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. We have further noted that the petitioner was found deficient in chest and overage about one year, one month and eighteen days, therefore, was not recommended by the respondent-police department.

9. 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.

10. 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.

11. 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 constable on Son/Shahed Quota can be made without resorting to the procedure.

12. To rebut the said contention, 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.

13. As per AAG, 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 Shahed 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 Provincial Government as required under Section 12 of Police Act, 1861.

14. Learned counsel for the Petitioner while laying emphasis on Rule-10-A & 11-A of Sindh Civil Servant (Appointment, Promotion and Transfer Rules, 1974) argued that Petitioner cannot be non-suited on the ground of overage as there is general relaxation of upper age limit in all the departments of Government. However, after thorough examination we have noted that Rule 10-A and Rule 11-A until 30th July, 2011, published on 01.09.2011 which does not provide any relaxation for the post of Police Constable. The aforesaid provision is very much clear needs no interpretation. 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. We have also come across 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.

15. In the light of above discussion, it is crystal clear that Police Department cannot circumvent the law to make recruitment to the post of constable 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 Shaheed Recognition and Compensation Act, 2014. The appointment of constable can only be made under the recruitment rules, through competitive process on merit.

16. In view of the facts and circumstances of the case and for the reasons mentioned as above, we are satisfied with the explanation furnished by the alleged contemnors that substantial compliance of the order dated 13.10.2016 passed by this Court has been made in its letter and spirit, therefore, at this juncture, no case for initiating contempt proceedings is made out against the alleged contemnors. Thus, we are not persuaded to continue with any further on the listed application bearing MA No.5880 of 2018, having no merits, is accordingly dismissed.

JUDGE

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