

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-3362 of 2017.

Present.

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhary

Shabbir Aslam Petitioner

Versus

Province Sindh and others Respondents

Date of Hearing: **23.10.2018.**

Petitioner present in person.

Mr. Shehryar Mehar, Assistant Advocate General Sindh along with
Inspector Willayat Hussain of Police Station Frere.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:-, Petitioner is seeking appointment for the post of Assistant Sub Inspector (ASI) in BPS-09 in Sindh Police with the assertion that on 29.01.2015, he applied for the aforesaid post on the basis that he completed certain educational courses from Pak-Army in the year 2006. Petitioner claims that he qualified the test/interview but the Respondents refused to issue appointment letter to him for the aforesaid post. Petitioner claims that he approached the Respondents by moving various applications for the post of ASI but they ignored the same without assigning any reason. Petitioner, being aggrieved by and dissatisfied with the inaction of the Respondents has approached this Court on 19.5.2017.

2. Petitioner, who is present in person has submitted that he has been seriously prejudiced and not treated in accordance with

law, as provided under Articles 4 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973; that grave injustice has been done with him with no fault on his part by depriving him for his appointment to the post of ASI, for which he qualified all the prerequisite tests; that the Respondents are liable to rectify their arbitrary and illegal actions so as to enable him to lead his life smoothly; that due to such acts and deeds of the Respondents, he has suffered a lot of mental torture, agonies and by such situation, he is facing problems too; that the denial in this regard by the Respondents amounts to invade upon and infringement of his fundamental and legal rights, as guaranteed under the Constitution of the Islamic Republic of Pakistan 1973 that are enforceable by this Court in exercise of its Constitutional jurisdiction; that he has been continuously approaching personally the Respondents to appoint him for the post of ASI but to no avail; that he is aggrieved by the illegal actions of the Respondents. He lastly prays for allowing the instant Petition.

3. During the course of arguments, we asked from the Petitioner as to how he is claiming an appointment for the post of ASI without Public Notice and fulfillment of other codal formalities as required under the Recruitment Rules for the aforesaid post. He in reply to the query, referred to his objections to the comments filed by him on 13.1.2018 and submitted that the post of ASI can be filled by the Respondents and not through SPSC; that the Respondent No.3 and 5 mentioned his name in the list of Police Constable and failed to recommend his name for the post of ASI as

per his entitlement under the law. Per Petitioner this is malafide act on the part of Respondents.

4. It may be stated that in view of urgency shown by the Petitioner today, he has narrated the entire case on merits, which has been rebutted by Mr. Shehryar Mahar learned Assistant Advocate General, without filing the comments of Respondents No. 1 to 4. He added that the instant Petition is not maintainable under the law.

5. We have considered the contentions of the parties and perused the material available on record. We have also noted that the post of ASI was referred to Sindh Public Service Commission in the year 2002, 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."

6. Perusal of record shows that Petitioner was born on 21.09.1986 and his age at the relevant time as claimed by the Petitioner was 29 years' which exceeds from the required age i.e. 28 years for the post of ASI.

7. We have scanned all the relevant Act, Rules and Notifications, 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 ASI. The qualification required from the candidates under Rule 12.3 of Police Rules 1934 is the prerequisite for the appointment to a post of ASI. In our view 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.

8. We have noticed that the Petitioner was discharged from Pak-Army vide letter dated 23.10.2008. An excerpt of the same is reproduced below:-

“Discharge Certificate

No. 3334/08 (13)
No. 3142987 Rank/Trade OC11
Shabbir Aslam
172, MBRL Regt Arty
Name Muhammad Aslam
House No. 128, Street No.17, Karachi
P/O Karachi Defence Thana Frere
Tehsil Junnubi District Karachi
Date at the time of end 20 years, 39 days
Date of birth 21.09.1986 Date of Enrol. 30.10.2006
Tfr to Res on 20.07.2008 Disch. 20.07.2008
Distinctive Mark -----
Cause of discharge Being Unsustainable
Total qualifying service 14 years, 8 months & 20 days
Total Non-Qualifying Service Nil
Character as assessed vide Ar(1) 172 Satisfactory
Fit for Civ Employment Fit/yes
Date of completion of Res Liability 29.10.2016
Awarded medal Nil
Pay and Allow (1)Basic Pay 3720/pm (2)J/Allow 300/pm
(3) C/IO Nil /pm (4) C/Alice 680/ pm
(5)D/Pay Nil /pm (6) Medical Free
Education Mil /pm Civ 10th
Name -----Wife /Mother

MAJ
SEC OFFR S-3(REL)
ARTILLERY RECORDS

9. We, on the basis of contentions of the parties with the material produced before us, have reached to the conclusion that

the name of the Petitioner is not born out on the record that he succeeded in test/interview, even record does not reflect that the Petitioner applied for the post of ASI in BPS-09, through Public Notice or competitive process. Petitioner has failed to place on record the copy of the Advertisement, call letters for the test and interview against the aforesaid post. Merely passing educational courses from Pak-Army is no ground to claim appointment in the Government service, without going through the recruitment process for the post applied for. Prima-facie, in absence of the aforesaid material, Petitioner is not entitled to seek appointment against the said post, which could be filled through Sindh Public Service Commission under Section 7 (3) of Police Order, 2002 (since repealed) or Police Rules, 1934 or through competitive process on merit.

10. We therefore in the light of what has been noted above are not satisfied with the assertion of the Petitioner and for the aforesaid reasons, in our view Petitioner has failed to make out a case for indulgence of this Court. The instant Petition is devoid of merit, thus is dismissed.

Karachi
Dated: 07.11.2018.

JUDGE

JUDGE