

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

**Mr. Muhammad Shafi Siddiqui, J.
Mr. Zulfiqar Ahmad Khan, J.**

C.P Nos.D-4329 of 2019

Muhammad Tahir Khan Chandio & Others v/s. Province of Sindh & Others

Petitioner : Through Mr. Malik Naeem Iqbal, Advocate
Respondents : Through Mr. Salman Talibuddin, Advocate General,
Sindh a/w Raza Mian, Akbar Ali, DSP (Legal)
and Tabassum Abbasi, Director, I.T. CPO, Sindh Karachi.
Date of Hearing : 17-12-2019

JUDGMENT

1. **Zulfiqar Ahmad Khan, J.:** While a few other questions are also posed through this petition which will be addressed in the later part of this Judgment, however, the fundamental question before us is as to who is permitted by law to wear uniform in the police service and who isn't. While the Petitioners were inducted in the Police service in the year 2014 when Police Order 2002 was in force, which stayed in the field till 15.07.2011 when the Police Act, 1861 was revived, since none of these two laws dealt with police uniforms, which subject in both these two regimes continued to be governed by the Police Rules, 1934 and the Police Service of Pakistan (Uniform) Rules, 1952, this question is thus answered in the light of the machinery provided by these rules and the guiding principles laid down by the superior courts.
2. Before we come to the issue of uniform, it is important to understand the scheme of the 1861 Act which defines "police" under section 1 to include *all persons who shall be enrolled under this Act*. To ensure unity of command, section 2 in its material part provides that *the entire police-establishment under a Provincial Government in a general Police district shall, for the purposes of this Act, be deemed to be one police-force, and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, as shall from time to time be ordered by the Provincial Government*. (Underlining is ours).
3. In the present context, it is to be noted that the police-force is composed of (a) police-officers and (b) police-men; both formally enrolled and operating under one command. Section 4 provides that *the administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General*

and Assistant Inspectors-General as to the Provincial Government shall seem fit. Also of relevance is section 7 of the Act which provides that *subject to such rules as the Provincial Government may from time to time make under this Act the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police-officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same.....* These provision of the Act, when read together suggest that while administration of police-establishment is vested in the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General, these officers along with District Superintendents are empowered to dismiss, compulsorily retire, suspend or reduce any police-officers of subordinate ranks below the latter rank, as interpretation-clauses of section 1 provides that *references to the subordinate ranks of a police-force shall be construed as references to members of that force below the rank of Deputy Superintendent,* meaning thereby all officers below the rank of Deputy Superintendent are under the administrative control of the high ranked police-officers.

4. Having established administrative and sub-ordinate ranks, both collegiated as police-officers, the next breed of individuals which the Act recognises are police-men. It is interesting to note that while Act in its body refers to Police-officers over a dozen times, nowhere in the Act the word police-men (or man) appears. Worth mentioning references to police-officers in the Act 1861 are reproduced in the following:-

a. **Section 22. Police-officers always on duty and may be employed in any part of district.**

Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police-officer in any part of the general police-district.

b. **23. Duties of police-officers.** It shall be the duty of every police-officer promptly to obey and execute all lawful orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking-shop, gaming-house or other place of resort of loose and disorderly characters.

- c. **24. Police-officers may lay information, etc.** It shall be lawful for any police-officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant or such other legal process as may by law issue against any person committing an offence.
 - d. **25. Police officer to take charge of unclaimed property.** It shall be the duty of every police officer to take charge of all unclaimed property and to furnish an inventory to the District Superintendent of Police who shall send a copy of the inventory to the District Public Safety Commission....
 - e. **35. Jurisdiction.** Any charge against a police-officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate.
5. Having unrolled the fabric of law knitted by the Act, it would be pertinent to now consider the relevant parts of the Police Rules 1934 (“the 1934 Rules”) relating to uniform. Chapter IV of the Rules titled “Clothing” is the most relevant component of these rules where Para 4-1 titled “Specification of uniform – Uniform for officers of the Police” provides that *for the purpose of uniform, the Police Service of Pakistan (Uniform) Rules, 1952, and for the purpose of Decoration and Medal, Schedule to the Decoration Act, 1975 shall apply.* Paragraph 4-4 titled “Uniform to be worn on all duties” is the very important in the context of the controversy at hand, thus we reproduce its full text in the following:-
1. Police officers of all ranks shall wear uniform on all parades and on all duties of a ceremonial nature or which involve the exercise of their powers as police officers; provided that this rule shall not apply to police officers specifically deputed on plain cloths duty. The wearing at any time of a mixture of uniform and plain clothes, or of unauthorized variations of uniform, is absolutely prohibited.
 2. The nature of uniform to be worn on duty shall be regulated by the order of the Superintendent of Police according to climatic conditions and the nature of the duty, subject to the rules in this chapter and its appendices, and provided that all men parading or proceeding on duty together shall be clothed alike. Deputy Inspectors-General shall require that the spirit of these orders be observed, but should not otherwise limit the discretion of Superintendent.

3. These orders apply strictly to police officers exercising their legal powers in rural areas. The protection of section 353, Pakistan Penal Code, shall not ordinarily be afforded to any police officer who may be assaulted, unless the Superintendent of Police is satisfied that such officer was at the time properly dressed in an authorized uniform and equipment. For all duties performed in the public view police officers of all ranks shall be so turned out that there can be no possibility of mistake as to their being police officers. For such duties through the comfort of officers and men in climatic and other circumstances must be considered, smartness shall not sacrificed.
4. Officers and men appearing in Courts of law as prosecutors, witnesses, orderlies or escorts, and clerks on duty at city, cantonment or civil lines police stations, shall wear uniform. Other officers shall not ordinarily wear uniform on office duties. (underlining is ours)
5. Police regulation uniform shall not be worn at fancy dress balls, nor shall such uniform be lent for use or worn by their owners in dramatic performances or other entertainments. There is, however, no objection to uniform of obsolete pattern being worn on such occasions.
6. The mandatory and authoritative language in which clause 4-1 of these rules is couched must not leave any doubt in one's mind that all police officers and men while performing their duties must wear uniform. At this juncture attention could be drawn to Paragraph 3 of the Police Service of Pakistan (Uniform) Rules, 1952 which through its Schedule lists the ranks who shall wear uniform alongwith badges to contain 1. Inspector General of Police, (2) Dy. D.I.B. & D.I.G., (3) Superintendents, (4) Assistant Superintendents and (5) Probationary Assistant Superintendents. The need to remain in uniform while performing duties is so essential that the protection granted under Section 353 PPC is not ordinarily afforded to any police officer who may be assaulted unless the Superintendent of Police is satisfied that such officer was at the time properly dressed in the uniform
7. Most interesting is clause 4 of these rules which requires that not only officers, but police-men appearing in Courts of law as prosecutors, witnesses, orderlies or escorts, and clerks on duty at city, cantonment or civil lines police stations, shall wear uniform. The use of the word "shall"

makes it mandatory of these class of police-men to wear uniform while discharging in their functions either in courts, in the city, cantonments or civil lines police stations.

8. It could be thus deduced from the foregoing that law requires police-officers having either high administrative or subordinate ranks, as well as police-men performing their duties at Courts of law as prosecutors, witnesses, orderlies or escorts, and clerks on duty at city, cantonment or police stations to wear uniform. Rule 4-4.1 makes any alteration or departure from set uniforms absolutely prohibited.
9. Having deduced to this basic principle that the police laws do not envisage any police officer or policemen performing his official functions to be without uniform, its social impact is very vital to the law enforcement in a society. Extensive research publications on the subject of social impacts of police uniforms have been made over the centuries. In a related paper titled "The Power of Police Uniform" by Bernadette Doranan three experiments have been reproduced where, in the first one, to test citizen's behavior, a male researcher randomly approached pedestrians and gave them one of three orders: to pick up a paper bag littering the sidewalk, to give a dime to another passerby, or to step back from a bus stop. During the course of the experiment, the researcher wore ordinary casual clothing, milk delivery apparel or a police-style uniform with a badge but no weapons. Only when the researcher wore the police-style uniform, did people consistently cooperated and obeyed the order. In fact, their obedience continued even after he walked away from the spot. In another study, a female researcher alternately dressed in business attire, casual clothes or a police-style uniform told passersby to give change to a person who had parked at an expired meter. Again, the rate of compliance among both men and women was highest when she was dressed in uniform. And in a third research project, when an individual wearing a police-style uniform stood on a sidewalk near a corner, drivers committed fewer traffic violations at that intersection. This occurred even though the uniform did not represent a real police establishment uniform and even did not display a badge or weapon. The irrefutable conclusion of all three research projects is that the police uniform is one of the most immediate, important visual representations of the law enforcement professionals' instantly signaling authority and official status and inspiring people to respond accordingly.
10. Having drawn the foregoing irresistible conclusion as to the legal and social importance of uniform for the police, we now revert to facts of the instant case where precise grievance of the petitioners in this petition relates to their purported re-designation and adjustment in a non-

uniformed Information Technology (IT) cadre allegedly created in compliance of judgment of Sindh Service Tribunal dated 22.05.2015 passed in Appeal No. 118/2015 (available at page no. 55). Briefly facts of the case at hand are that the petitioners were appointed as ASI (Computers) on 13.11.2004 pursuant to recommendations of Sindh Public Service Commission. At the time of appointment of petitioners, the law governing police-establishment was, as mentioned earlier the Police Order, 2002 and Police Rules, 1934 saved under Article 185 of Police Order, 2002 were in the field. In terms of Article 6 of Police Order, 2002, Government was to maintain a separate police establishment for every general police area. Under Article 7, police establishment for each general police area was to consist of such numbers in the senior and junior ranks and have such organization as the Government may from time to time determine.

11. Under Article 7(2) Government was empowered to determine recruitment criteria, pay allowances and all other conditions of service of the police and Article 7(3) provided that recruitment in the police other than ministerial and specialist cadres have to be in the rank of Constables, Assistant Sub Inspector and Assistant Superintendent. The proviso to Article 7(3) provided that selection for direct recruitment in the rank of Assistant Sub Inspector shall be through appropriate Public Service Commission and shall not exceed 25% of total posts in that rank. Article 8 of Police Order, 2002 provided that the police establishment constituted under Article 7 shall, as far as, practicable, be organized on functional basis into branches, bureaus and sections and Article 8(2) provides that the branches, divisions, bureaus and sections referred to in clause (1) could include Information Technology.
12. A careful examination of the above provisions manifest that it is the Provincial Government was empowered to constitute police-establishment and any such constituted establishment was to be organized on functional basis into branches, divisions, bureaus and sections. It was also the sole prerogative of the Provincial Government to determine recruitment criteria, pay and allowances and all other conditions of service of the police. Similarly, direct recruitment in the police-establishment other than ministerial staff and specialist cadre had to be in the rank of Assistant Sub Inspector (ASI) through Public Service Commission.
13. In the instant case, respondents admittedly could not produce any order or sanction of Government of Sindh for the constitution of any branch, division, bureau or section for IT related functions, so also did fail in setting up any recruitment criteria, pay and allowances and other conditions of ASI IT/Computers. It is also an admitted fact that, the petitioners were directly appointed as ASI (Computer) through Sindh Public Service Commission and Police Order

was made applicable to them. Further, the petitioners were appointed against the posts of regular police-establishment and they underwent same training as was imparted to regular subordinate police officers. Direct recruitment in the rank of ASI also manifested that they were not appointed against any specialist or ministerial cadre as otherwise they could not have been appointed as ASI under Article 7(3), which is not the case at hand.

14. The issue arose when the question of seniority of the petitioners came in limelight and for the want of constitution of police-establishment's IT related functions. The petitioners felt that all branches, divisions, bureaus and sections were reluctant to fix seniority of the petitioners in any such branch/division/bureau/section and kept on shifting responsibility and showing inability to fix seniority, lien, prospects of promotion etc., which led them to file Constitutional Petition No. D-05/2012 (Noor Shahbaz Rind & Others VS Province of Sindh & Others) before this Court, which transferred the dispute to Sindh Service Tribunal, which finally decided it vide its judgment dated 22.10.2015. It would not be out of place to mention here that on 15.07.2011 Police Order, 2002 was repealed by the Sindh Assembly and Police Act, 1861 was revived vide Sindh (Repeal of Police Order, 2002 and Revival of Police Act, 1861) Act, 2011, where however, as mentioned earlier Section 2 of the Act 1861 remained almost identical to that of section 7 of Police Order, 2002 and only Provincial Government was empowered to constitute police-establishment and determine pay and all other conditions of members of the subordinate ranks of police force.
15. For the constitution of IT branch/division/bureau/section, Provincial Government is required to give such sanction and amend Chapter 12 of Police Rules, 1934, which contains provisions for appointment. A new rule regulating appointment of IT related police officers of subordinate ranks was required to be added, just like the one added in the case of appointment of Urdu Stenographers and recruitment in technical district by amending Rule 12.3-A and 12.3-B and Appendix 12.3-A respectively. Instead, the petitioners were recruited under Standing Order No.187/2003 (available at page No.29) issued by Inspector General of Police. With regards creation of separate IT cadre, which according to respondents, is merely supported by the obiter dicta of Hon`ble Supreme Court in the judgment reported as 2016 SCMR 1254, that "*there can be employees in the police department, which are non uniformed like ministerial staff and/or IT Department but they are recruited and regulated by the Sindh Civil Servants Act, 1973 and the Rules framed thereunder*", this not being the ratio decendi, does not have force of law. The question which arises for determination here is as to how a cadre can be created and how a civil servant recruited under Police Order, 2002 or Police Act, 1861 and Rules made there-under

could be merged/re-designated/adjusted in a new cadre constituted under altogether a different law. The answer to this question lies in the judgment reported as 2014 SCMR 1539 (Muhammad Bachal Memon v/s. Syed Tanveer Hussain Shah & others), where the Hon'ble Supreme Court has considered Sindh Civil Servant Act, 1973, Rules made thereunder alongside Fundamental Rules.

16. The facts of the Bachal Memon case *ibid* are that Engineers belonging to two separate departments viz C&W Department and Directorate of Education Engineering Works had separate cadres and separate seniority lists, where on 17.09.2002, pursuant to re-organization of departments, engineering works in Education Department which were being undertaken by the Directorate of Education Engineering Works were transferred to Communication Department. Later, on 1.11.2002, the Government of Sindh created Works & Services Department and engineers previously working in Education Department as well as C & W Department were brought under the administrative control of the Works & Services Department. The dispute arose upon issuance of combined seniority list of all engineers who were previously serving in two separate departments and had separate cadres and separate seniority lists. One of the parties was supporting the combined seniority list on the basis that by merger of departments cadres stood merged and the other was disputing it on the basis that merger of departments had no effect on terms and conditions, and cadres remained separate, requiring separate seniority lists to be issued. In this backdrop, the Hon'ble Supreme Court observed in paragraph Nos. 18, 19 and 20 as follows:

18. The Sindh Civil Servants Act, 1973, as noted above, has been enacted pursuant to the provisions of Article 240 of the Constitution of Pakistan, 1973 and deals with the appointments and conditions of service of persons, to and the terms and conditions of service of persons in connection with the affairs of the Province of Sindh and to provide for matters connected therewith and ancillary thereto. Section 8 of the Sindh Civil Servants Act, 1973 provides that for proper administration of a service, cadre or post the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or post to be prepared. Section 9 of this act provides that a Civil Servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for the time being reserved under the rules for departmental promotion in the service or cadre to which he belongs. Rule 9 of the Sindh Civil Servants (Probation, Confirmation and Seniority) Rules, 1975 provides that in each cadre in a department, there shall be a separate seniority list of a group of civil servants doing similar duties and performing similar functions and for whose appointment the same qualifications and experience have been laid

down. Thus a cadre may be for the entire strength of the service or a part of a service sanctioned as a separate unit.

19. *What is of significance is that the cadre to which a civil servant belongs and the terms and conditions of his service or even the matter of promotion within his cadre can only be made by or under laws which are traced to and sourced in Article 240 of the Constitution. We are unable to see as to how allocation of administrative work or the configuration or re-designation of Government Departments or the framing of "rules for the allocation and transaction of business" of the Provincial Government can have an effect on the terms and conditions of service of a civil servant. We have made an effort to understand the argument of learned ASCs for Bachal Memon etc., that the reallocation of work within administrative Departments has the effect, ipso facto of merging two existing cadres and thereby altering, inter alia, the service, seniority and promotion prospects of a civil servant. Such a serious consequence can only follow from laws or rules expressly (or by necessary intendment) declaring such to be the consequence of a Governmental or legislative action. Furthermore, any such law or rule must trace its origin to the appropriate Article in the Constitution i.e. Article 240 ibid because a legal instrument such as the Rules of Business can only relate to the allocation and transaction of the Government's business. And, as noted above, the term "business has been defined as "all work done by Government". From a plain reading of Article 139(3) and the Sindh Government Rules of Business it is obvious that Article 139(3) does not extend to matters specified in Article 240 relating to "appointments to and the conditions of service of persons in the service of a Province" because such matters can only be dealt with and regulated "by or under Act of a Provincial Assembly" as per requirements of Article 240 of the Constitution. After having heard learned counsel for the parties at great length and upon consideration in detail inter alia, of Articles 139 and 240 of the Constitution, the Sindh Government Rules of Business 1973, the Sindh Civil Servants Act, 1973 and the rules framed thereunder, we have arrived at the conclusions below.*

20. *From the date on which business relating to the Education Engineering Works was transferred and assigned to the Education Department, the Education Department became empowered to make initial recruitment of engineers for the engineering works assigned to it and a cadre was established for such engineers employed in the Education Department. This cadre was distinct from the cadre for engineers in the C&W Department. These two separate cadres continued their parallel existence firstly upto 1-11-2002 when the Works and Services Department once again was assigned all engineering works including the work which was being undertaken by the Directorate of Education Engineering Works within the Education Department. What is even more relevant is that even after 2002, the two cadres continued in parallel*

alongside each other. The learned Division Bench of the High Court in its judgment dated 12-11-2010 has observed that the two streams merged into one which was a mujmua-al-bahrain."

17. From a bare perusal of the above noted findings of the Hon'ble Supreme Court given in the case of engineers, it manifests that for the creation of a cadre, particularly when it had the effect of altering terms and conditions of a Civil Servant, either law is to be made by legislature, or rules are to be framed by the Government within its the rule making power. In the present case, though it is claimed that new IT Cadre has been created, yet neither any legislative action having been taken, nor any rules being framed by the Government. Even in case of framing of rules, it is the Cabinet which is to approve such rules in view of famous Mustafa Impex Karachi v/s. Government of Pakistan case (2016 PLD SC 808) case. Thus, in the absence of Government sanction, no new Cadre can be created. Hence, the purported IT Cadre, in our humble view, is illegal and *void ab-initio* in the circumstances of the case. As a matter of fact, nowhere in the Police Act, 1861 the word "cadre" appears. Police being a force is envisaged to have "ranks" to enforce unity of command and to visibly distinguish various levels of responsibility within the force. Term "cadre" though appears in the Police Rules, 1934, however, by way of hierarchical arrangement of ranks alongwith the benefits, qualifications or job description. Oftenly used in respect of clerical staff, reserved or adhoc policemen or women police so that these sets of individuals could be arranged in a manner to be treated in a like fashion. No entry directly in a cadre without having been assigned a rank to him/her is permissible in the police-establishment, in our humble view.
18. From the comments of the respondents, it further transpires that vide order dated 25.10.2016 (available at page 63 of the comments), sanction of Government was accorded for the release of 2,386 posts of IT Cadre & Ministerial Staff through SNE. Applying the Mustafa Impex (ibid) case, this Court was not satisfied that any sanction of the Cabinet was sought for these large scale appointments in the police-establishment, making this sanction void of any lawful authority in the first place, and secondly, the same was accorded without any changes in the Rule 12 for the creation of IT posts, and thirdly the basic pay scale of posts for which sanction was earlier accorded stood changed, as well as, the method of appointment, qualification and other conditions of posts, seemingly (as no evidence to its contrary is shown to us) were laid down without seeking approval of the Provincial Government for the change of basic pay scale (for instance, the post of computer operator as per sanction of Government is in BPS-05, whereas, in the purported IT Cadre it is shown equal to BS-12). This blatant misuse of authority and paying newly appointed blue-eyed individuals, working for the same post, at exorbitantly high salary and their initial appointment in a higher grade is clearly against the principal of natural justice and would only result in ripples in police-establishment, distorting unity of command. Hence the same sanction and emoluments attached therewith being discriminatory, are declared illegal as they pose serious danger to the unity of the force.
19. In view of the foregoing, this petition is allowed. Petitioners not to be stripped off their uniforms. The purported creation of IT Cadre (instead of posts) in the light of Mustafa Impex

(ibid) case is declared illegal, so are the new purported appointments in the said position, unless appropriate amendments are made in the Police Rules. Resultantly the order dated 13.09.2019 shifting and re-designating the petitioners to IT Cadre is also declared having been made without any legal competency and in excess of jurisdiction, thus set aside.

Karachi: March _____ 2020

Judge

Judge