

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -6435 of 2020

Muhammad Danish Sidat

Versus

Province of Sindh and 07 others

Date of hearing
& order : 28.01.2021

Raja Rashid Ali, advocate for the petitioner.

Mr. Ali Safdar Depar, Assistant Advocate General Sindh along with Raza Mian DSP (Legal) CPO, SIP Aqeel KPO, and Inspector Tasneem SSU.

ORDER

ADNAN-UL-KARIM MEMON, J. - The short issue which arises for consideration in the present proceedings is whether the respondent-Police Department was justified in withholding the appointment of the petitioner for the post of Assistant Sub-Inspector (BPS-09) on the ground of pending criminal case.

2. Raja Rashid Ali, learned counsel for the petitioner, contended that he was recommended by Sindh Public Service Commission (SPSC) vide letter dated 26.09.2019 for the post of Assistant Sub-Inspector (BPS-09) in CTD Karachi Range in Home Department, Government of Sindh. Per learned counsel, later on, offer of appointment letter was issued in his favour vide letter dated 19.02.2020. He pointed out that the respondent-department has withheld his appointment order on account of the pendency of the criminal case arising out of FIR No.321/2018 registered for offenses under Section 380, 457, and 34 PPC at Police Station Bilal Colony. Learned counsel emphasized that his candidature for the above post could not be kept in abeyance on account of pendency of the criminal case under the law. He asserted that the petitioner has already been acquitted in the aforesaid crime vide order dated 13.03.2020 passed by learned Civil Judge & Judicial Magistrate-XIII, Karachi Central. He relied upon the order dated 13.03.2020. He lastly prayed for allowing the instant petition.

3. Learned Assistant Advocate General Sindh has resisted this petition on the ground that though the petitioner has been acquitted from the criminal case arising out of FIR No. 321/2008 registered against him at Police Station Bilal Colony, but lodging of

aforesaid FIR against him renders him unfit to be appointed in Police Department as now he carries the stigma of involvement in the above criminal case. We confronted him that mere registration of case is no ground to withhold the candidature of the petitioner, though he has been honorably acquitted from the charges leveled against him in the charge-sheet by the order of learned Magistrate as discussed supra. He replied that Police Department is a disciplinary force and a person having a record of criminal activities cannot be suited in the Police force.

4. We have heard learned counsel for the parties and perused the material available on record.

5. Prima facie, the alleged incident of theft took place on 21.12.2008, but the FIR of the incident was lodged on 31.12.2008 after the delay of ten (10) days and the prosecution failed to produce witnesses before the learned trial Court, resultantly proceedings of the criminal case were stopped under Section 249 Cr.P.C. vide order dated 15.05.2020, even after the lapse of 10 years, the prosecution was not bothered to move an application for reopening of the case. Subsequently, the petitioner filed an application for restoration of the case on the ground that he qualified for the post of Assistant Sub-Inspector in Police Department through the competitive process. The learned trial Court after hearing the parties restored the case to its original position and notices were issued to the prosecution witnesses for trial. In the meanwhile, complainant Danish Ahmed appeared before the learned trial court and was examined at Ex. 07 whereby he did not support the prosecution case and stated that he had not implicated the petitioner and others in the aforesaid FIR and he was/is not the real culprit of the alleged offense as he had not seen him nor gave his name to the police; and, no recovery was effected from his possession in his presence. Thereafter, with the consent of the learned Assistant Deputy Public Prosecutor, he was acquitted from the charge under Section 249-A Cr. P.C vide order dated 13.03.2020. During arguments, we have been informed that no appeal against the aforesaid order was preferred by the respondent-Police Department.

6. We have gone through the Sindh Civil Servants Act, 1973, and rules framed thereunder as well as Police Rules, 1934, and Disciplinary Rules, 1988, but could not come across the provision which restricts such appointment in civil/public service on account of pendency of a criminal case, however, Section 15 of the Sindh Civil Servants Act, 1973 provides that no person convicted for an offense involving moral turpitude shall unless government otherwise direct, be appointed to a civil service or post, which is not the case in hand. It appears from the record that the petitioner was

recommended by the Sindh Public Service Commission vide letter dated 26.09.2019 for the post of Assistant Sub-Inspector (BPS-09) in CTD Karachi range in Home Department, Government of Sindh; and, was offered for the aforesaid post vide letter dated 19.02.2020, and till date said offer letter is still intact, however, his appointment order has been withheld by the police department on account of pendency of the criminal case as discussed supra from whom he has already been acquitted by the learned trial Court vide order dated 13.03.2020. In view of the above position of the case, prima facie, we see no legal impediment to continuing withholding of his appointment order for the aforesaid post on the analogy as put forward by the respondent-Police Department.

7. Learned AAG thus in our view has failed to justify the impugned action of the official respondents.

8. As a result of the foregoing discussion, we dispose of the instant petition along with the pending application(s), with directions to the competent authority / Inspector General of Police, Sindh to scrutinize the candidature of the petitioner for the post of Assistant Sub-Inspector (BPS-09) and if the petitioner is found fit in all respects to be admitted as Assistant Sub-Inspector in Sindh Police, his candidature may be processed for the appointment strictly under the Recruitment Rules for the aforesaid post within one month from the date of communication of this order and submit compliance report through MIT-II of this Court.

9. These are the reasons for our short order dated 28.01.2021 announced in open Court whereby we have allowed the instant petition.

J U D G E

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Nadir*