

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-948 of 2015

Umer Yamin Versus The Inspector General of Police & another

Date of Hearing: 17.09.2019

Date of Order: 17.09.2019

Mr. Qaim Ali Memon, Advocate for the Petitioner.

Mr. Shahriyar Mahar, Assistant Advocate General Sindh

ORDER

ADNAN-UL-KARIM MEMON, J:- Petitioner is seeking declaration to the effect that he is eligible and fit candidate for appointment as Junior Clerk in Police Department, on the basis of Son quota in the light of Standing Order No.260/2011.

2. At the very outset, we asked the learned Counsel to satisfy this Court with regard to maintainability of the instant Petition on the ground that all Standing Orders issued by the Inspector General of Police Sindh for recruitment against Son Quota have been declared nullity in the eyes of law by the Hon'ble Supreme Court reported in 2010 PLC 924 as the same were issued without approval of the Provincial Government including the subject Standing Order No.260/2011.

3. Mr. Qaim Ali Memon, learned Counsel for the Petitioner has heavily relied upon the order dated 26.5.2016 passed by this Court, Circuit Court, Hyderabad in C.P No.D-170/2015 and argued that in the aforesaid matter direction was issued to the Respondent-Police Department to appoint the candidates applied on the basis of aforesaid standing order. He further pointed out that the matter landed in the Hon'ble Supreme Court in Civil Petition No.652-K/2016, whereby Hon'ble Supreme Court vide order dated 17.3.2017 dismissed the Petition of Government of Sindh being barred by 31 days. He emphasized that the direction contained in the aforesaid order is still in force and Petitioner seeks similar treatment. In support of his contention, he referred to his statement dated 28.2.2019 and argued that the Respondent-Police Department has already issued various appointment orders

in compliance with a decision dated 15.8.2018 passed by this Court in C.P No.D-170/2015; that the Respondents are discriminating the Petitioner in violation of Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974, Standing Orders issued by Inspector General of Police, Sindh (IGP) and Police Rules. Learned counsel further added that Petitioner is entitled to be appointed to the post of Junior Clerk on the basis of Son quota as well as on merits; that the Petitioner has been seriously prejudiced and not treated equally, therefore, the Petitioner is entitled to be treated equally in accordance with law, as provided under Articles 4 and 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 Junior Clerk, for which he is fit and qualified; 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; that the Petitioner has been continuously approaching personally to the Competent Authority to appoint him for the post of Junior Clerk on the basis of Son Quota but nothing has been done; that the Petitioner is aggrieved by the illegal action of the Respondents. He lastly prays for allowing the instant Petition.

4. Mr. Shahriyar Mahar, learned A.A.G Sindh, representing the Respondents, has contended that the Petitioner is not entitled to be appointed in Police Department on the basis of Son quota on the basis of Standing Orders issued from time to time by Inspector General of Police, Sindh as the same had not been approved by the Provincial Government. He further added that the Honorable Supreme Court has nullified all the Standing Orders issued by the Inspector General of Police, Sindh, which are not approved by the Provincial Government; therefore, no right has accrued in favour of the Petitioner for the post of Junior Clerk. He lastly prayed for dismissal of the instant Petition.

5. We have heard learned counsel for the parties and perused the material available on record and case law referred to herein above.

6. Petitioner claims to be entitled against the Son quota in Police Department. We inquired from the learned counsel for the petitioner that whether there is any provision for Son quota in Police Department? He reiterated his submissions as discussed in the preceding paragraph.

7. Let us shed light on the policy for recruitment in Sindh Police-2016. Per learned AAG the same has been framed and approved under the directives of the Hon'ble Supreme Court of Pakistan in Civil Petition for leave to appeal No. 634-K of 2016, 6345-K of 2016 and 644-K of 2016 to 646-K of 2016 vide order dated 26.12.2016. The aforesaid Recruitment Rules clearly depict that the post of Police Constable in all units of Sindh Police can be filled in the aforesaid manner. In our view only those candidates can be appointed against the post of Junior Clerk, who meets the requisite criteria as provided Rule 11-A of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974.

8. We are of the view that respondents have rightly rejected candidature of the Petitioner. Besides, Petitioner has failed to establish case of discrimination and/or violation of any Law.

9. Adverting to the main contention of the petitioner that under standing orders police department is empowered to appoint the petitioner against the son quota. 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. 260/2011 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 Junior Clerk on Son Quota can be made. 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.

11. Apparently, the said Standing Order has not been approved by the Provincial Government as required under Section 12 of Police Act, 1861.

12. Section 12 of the Police Act, 1861 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 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 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. Reverting to the moot point raised by the learned Counsel for the Petitioner that candidature of the Petitioner was assessed by the respondents for the post of Junior Clerk against Son Quota. It is an admitted position that Standing Orders have not been approved by the Provincial Government. Therefore, no sanctity can be attached with such Standing Orders to claim benefit.

15. 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 is entitled for the post of Junior Clerk on son quota. However, after thorough examination we have noted that Rule 10-A and Rule 11-A until 30th July, 2011, published on 01.09.2011 provide complete mechanism for appointment against deceased quota only and not on the basis of son quota.

16. We are not impressed by the contention of learned counsel for the Petitioner on the aforesaid proposition for the reason that aforesaid legal position explicitly show that there is concept of deceased quota subject to all just exception and not son quota, since petitioner has applied against the son quota in police department which under the aforesaid provision cannot be done so.

17. Adverting to the contention of the Petitioner with regard to the order dated 26.5.2016 passed by this Court in C.P No.D-170/2015, suffice it to say that in recent judgment of the Hon'ble Supreme Court in the case of Gul Hassan Jatoi *supra* all the standing orders issued by the IGP Sindh without approval of the Government are not in accordance with law, thus, the Petitioner

cannot take resort of the order passed by this Court in presence of the Judgment of Hon'ble Supreme Court.

18. In the light of above discussion, it is crystal clear that Police Department cannot circumvent the law to make recruitment to the post of Junior Clerk on the basis of Son/ quota by issuing Standing Orders or by invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. The appointment in Sindh Police can only be made through competitive process on merit as provided under the recruitment rules and not otherwise.

19. In view of what has been discussed above, the instant Constitutional Petition is dismissed along with pending application(s).

JUDGE

JUDGE

*Nadir**