

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 139 of 2011

Present:-

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Date of hearing:

& decision:

27.11.2019

Petitioner: Abdul Sattar and others through Mr. Ghulamullah Chang for whom Mr. Ahmed Nawaz Chang, Advocate, is holding brief.

Respondents: Province of Sindh through Mr. Allah Bachayo Soomro, Addl.A.G. along with Insp. Moula Bux Jamali, Legal Branch District Badin for SSP Badin.

ORDER

ADNAN-UL-KARIM MEMON, J: - Through this petition, the petitioners have sought the following relief(s):-

- a. direct the respondents to appoint the petitioners as constables and issue appointment orders to them with effect from 24.01.2009 viz. date of fitness certificate issued by Civil Surgeon, Services Hospital, Badin and pay them salary without any delay.
- b. Award compensation to the tune of Rs.100,000.00 for the petitioner.

2. Brief facts of the case in nutshell are that in pursuance of the advertisement published in Daily Kawish dated 9.6.2008 inviting applications for recruitment of Police Constables (BS-5) in Sindh Police Department, petitioners applied for the same. The Respondents after conducting physical / written test and interview / viva-voce issued a final merit list in which the petitioners were declared successful hence they were sent for medical fitness in which they were also declared fit. However, the offer letters were not issued to the petitioner, therefore, they approached the respondents who declined to entertain the petitioners on the premise that as soon as the permission is granted by Home Department they will be given appointment orders, therefore, the petitioners waited for appointment

orders and now the respondents have disclosed that the subject posts have been filled up. Petitioners have submitted that the act of Respondents-Police department tantamount to circumvent the law and sabotage the merit at their own whims, which has no sanctity in eye of law and the same, is without lawful justification. Petitioners being aggrieved by and dissatisfied with the aforesaid actions of the Respondents have filed the instant petition.

3. Upon notice, the Respondents filed para wise comments and denied the allegations.

4. Learned A.A.G. representing the Respondents has raised the issue of maintainability of the captioned Petition.

5. We have perused the material available on record and heard learned A.A.G. on the issue involved in the matter.

6. First of all we take up the issue of maintainability of the instant Petition under Article 199 of the Constitution. We are of the view that the grievance of the Petitioners does not relate to the terms and conditions of service, but they have sought relief of appointment, therefore the Petition is not barred by Article 212 of the Constitution and is maintainable to be heard and decided on merits.

7. The primordial question raised in the present proceedings are as under:-

Whether the Petitioners possess the required qualifications for the post of Police Constable BS-05 in Sindh Police as per recruitment Rules and were declared successful candidates on merit?

8. Record reflects that the petitioners had applied for the post of police constable with other candidates in District Badin and they all were called for completion of formalities as required under the Recruitment Rules. Record further reflects that out of 5521 candidates, 899 candidates had qualified the test and were accordingly referred for medical fitness including the petitioners but during scrutiny of files of successful candidates the petitioner shown at serial No.04 was found involved and challaned in three criminal cases and the petitioner shown at serial No. 06 was deficient in qualification as he had studied only upto 8th Class, whereas the prescribed qualification for the post of Police Constable is Matric; therefore, they were not appointed. As regards petitioners shown as

Serial Nos. 1, 2, 3 & 5, their names stood at the bottom of merit list and after the issuance of appointment orders to 875 candidates as per merit list there remained no vacancy to be filled by issuing offer letters to the petitioners.

9. Record shows that the required age and qualification for the post of Police Constable is 18 years to 25 years and Matric. As per record, petitioners namely Abdul Sattar, Khan Muhammad, Abdul Rehman and Muhammad Hassan are of 33 years (overage). The affidavit in rejoinder of petitioner Muhammad Hassan shows that his case was considered by the department being brother of deceased employee. This is hardly a ground to consider the candidature of the said petitioner. The aforesaid assertion negates the recruitment rules, therefore, the Government having the domain to frame the policy of appointment and also provide the qualification for appointment against a particular post and thus, appointment against such post through initial appointment or otherwise cannot be claimed without fulfillment of the criteria and the requisite qualifications as provided under the Recruitment Rules as discussed supra.

10. In view of the foregoing factual position of the case, this petition is found to be meritless and is accordingly dismissed along with pending application(s) with no order as to costs.

JUDGE

JUDGE