

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D- 1227 of 2022
(Imran Hussain and 51 others v. Province of Sindh and 3 others)

Date	Order with Signature(s) of Judge(s)
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Fresh Case

1. For order on Misc No. 5542/2022
2. For hearing of main case

17.03.2022

Mr. Ghulam Akbar Lashari, advocate for the petitioners
Mr. Ali Safdar Depar, AAG

At the outset, we asked learned counsel for the petitioners to satisfy this Court about the maintainability of the instant petition on the premise that police constables can only be recruited on regular basis under the Recruitment Rules 2016 and not on a contract basis.

2. Learned counsel for the petitioners replied to the query and submitted that the colleagues of the petitioners, on the subject issue, approached the Hon'ble Supreme Court of Pakistan in CMA No.1233-K/2021. The Hon'ble Supreme Court of Pakistan vide order dated 16.02.2020 dismissed the application as not pressed on the ground that the petitioners would pursue their remedy before this Court and dismissed the petition as not pressed.

3. Learned counsel has assailed the vires of the report dated 1.11.2021 submitted by respondent No.4 in CP No.D-5793/2021 wherein the Committee declared the petitioners as unfit for the subject post of Police Constable on a contract basis; after they retired from their services from Armed Forces as per criteria of the existing Sindh Police Recruitment Policy; that the respondents have retained 9 constables whereas the petitioners have been left in the lurch, which is discriminatory treatment meted out with them. He further submitted the police constables were recruited through a competitive process in the year 2016 on a contract basis and subsequently, the services of 1,552 police constables were regularized vide office order dated 12.06.2018. He further pointed out that the Special Protection Unit (SPU) was created to provide security to China Pakistan Economic Corridor (CPEC) Projects and Chinese Nationals working on CPEC projects. He emphasized that due to the above situation, it was decided by the competent authority vide summary dated 29.01.2016 that recruitment of Ex-Army personnel (Combatants) be made in Sindh Police as Police Constable (BS-05) on 02 years' contract basis. Per learned counsel the recommendation of SPRB is illegal, void ab-initio, and not sustainable under the law, thus the findings against the petitioners are irrelevant as they had already been declared fit to retain the job. Learned counsel submitted that the respondent-police department has already retained the services of police constables and the petitioners seek similar treatment as meted out with their colleagues. He prayed for setting aside the letters dated 28.7.2021 and 30.07.2021 issued by respondents 3 and 4.

4. Learned AAG has opposed this petition on the premise that this Court vide judgment dated 14.12.2020 in CP No.D-3913/2020 already declared that the police constables cannot be appointed on contract basis, however, if found fit they could be retained on contract basis only for CPEC Project; that in compliance with the orders passed by this Court from time to time in different petitions, the competent authority constituted a Committee and after examining their eligibility regarding their fitness otherwise for retention on contractual service in Special Protection Unit (SPU) CPEC in the light of Recruitment Policy. Per learned AAG, petitioners were found not fit for the subject post, thus were not recommended. In support of his contentions, he relied upon the report of the Committee dated 01.11.2021 available at Page 369 to 459 and prayed for dismissal of the instant petition.

5. We have heard learned counsel for the petitioners as well as learned AAG on the maintainability of the instant petition and perused the material available on record.

6. Primarily, the issue of petitioners has already been set at naught by this court in the earlier round of litigation vide order dated 14.12.2020 passed by this court in CP No.D-3913/2020, an excerpt whereof is reproduced as under:-

“15. In view of the foregoing legal position, we are of the considered view that 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. Undoubtedly, it is the Government, which has to perform its function strictly in accordance with law but, prima facie, it is noticed that re-employment of ex-army personnel in the police department on a contract basis and their subsequent regularization in the police force is not in conformity with the law and the judgment passed by the Honorable Supreme Court in Suo Motu Case No.24 of 2010 (PLD 2011 SC 277) and in another Suo-Motu Case No.16/2011 (PLD 2013 S.C 443) as well as various judgments/orders passed by this Court. Therefore, the learned Assistant Advocate General has been asked to seek instructions on this behalf from the concerned quarters, however, he insists that ex-army personnel may be allowed to be retained till the age of their superannuation i.e. 60 years.

16. The aforesaid legal position of the case explicitly shows that there is no concept of appointment of police constables in Sindh Police on contract basis under the recruitment rules as discussed supra. Since the petitioner has applied against the post of a police constable in the police department on a contract basis, he is not entitled to such relief under the aforesaid provision.

17. In the light of the above discussion, it is crystal clear that Police Department cannot circumvent the law to make recruitment to the post of a police constable on a contract basis by issuing summary / Standing Orders or by invoking powers under the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974. The appointment of a police constable can only be made through a competitive process on a regular basis as provided under the recruitment rules and not otherwise. In view of the foregoing legal position, we are of the considered view that the appointment of police constables on contract and their subsequent regularization is not supported by any law.

18. Learned AAG has failed to justify the impugned action of the official respondents. However, he as well as the AIGP and DSP present in Court have prayed that the ex-army personnel appointed on contract as police constables specifically for the CPEC project and were subsequently regularized, may not be removed or dislodged from the said post. According to them, their sudden removal will have a serious impact on the CPEC project, which is of national importance as the Chinese Nationals, who are working in Sindh on the said project, may feel insecure. On behalf of the respondents, they undertake that in future no such appointment in the police department/force shall be made on a contract basis.

19. We are conscious of the importance of the CPEC project and the priority to be given to the foreign / Chinese nationals involved in the said project within Pakistan. Thus, the above submission by learned AAG and senior police officials cannot be ignored. However, this does not mean that the law should be ignored or is allowed to be violated. In this view of the matter, we deem it appropriate to pass the following order:

20. The appointment order dated 12.06.2018 was filed by IGP Sindh as annexure 'M' to his compliance report/comments dated 14.12.2020 regarding the appointment of contractual employees / ex-army personnel as police constables on regular basis, is hereby set aside. The competent authority / Inspector General of Police Sindh is directed to thoroughly scrutinize the candidature of the petitioner and all other police constables / ex-army personnel in BS-05, and if they are found eligible and fit to be admitted as a police constable in Sindh Police, they should be retained on contract basis only for the CPEC project. The competent authority / Inspector General of Police Sindh is further directed to complete this exercise within two (02) months from the date of receipt of this judgment and to submit a compliance report to this Court through MIT-II. Issue notice to the Chief Secretary Sindh and the Inspector General of Police Sindh for compliance.

21. In view of the special facts and circumstances discussed above, it is made clear that this order shall not be treated as a precedent for allowing any C.P. No. D-3913 of 2020 Page 8 of 8 appointments of a police constable in Sindh Police, whether ex-army personnel or otherwise, on contract basis and/or his subsequent regularization.

The instant petition stands disposed of in terms of the above direction and observation with no order as to costs."

7. We have noticed that the policy for recruitment of Police Constables in Sindh Police-2016 has been framed and approved under the directives of the Hon'ble Supreme Court of Pakistan in Civil Petitions 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. Policy No. 4.1.6 provides that Candidates for Police Constables who meet eligibility criteria will be considered for the recruitment as Constable in any of the executive establishment of Sindh Police.

8. In our view, only those candidates can be appointed against the post of the police constable in Sindh Police, who meet the required criteria as provided in the Recruitment Rules-2016. In this regard, our view is supported by Rules 12.6 and 12.15 of Police Rules, 1934.

9. Beside the above, the mandate was given to respondents vide order dated 06.10.2021 in CP No.D-4870/2021 and CP No.D-5793/2021 to scrutinize the candidature of the petitioners and all other police constables / ex-army personnel in BS-05, and if they were found eligible and fit to be admitted as a police constable in Sindh Police, they should be retained on contract basis only for the CPEC project.

10. The competent authority constituted Committee and examined the eligibility of each petitioner regarding their fitness otherwise for retention on contractual service and SPU (CPEC) in the light of Sindh Police Recruitment Policy and has submitted report, whereby the personal hearing was given to the petitioners, however, they were found unfit for the post of Police Constable on contract basis for CPEC Project. The report is available at page 369 to 459.

11. We have found that prima-facie there is no manifest discrepancy in the decision of the Scrutiny Committee requiring our attention. Even we see no substance in the arguments of the petitioners for the reason that the petitioners were required to meet the above criteria on the date of submission of their application; the petitioners, prima-facie, were found unfit on the said date and as such were/are not qualified to be considered for the job.

12. The Honorable Supreme Court has held in its various pronouncements that adherence to the statutory rules and procedures for the selection of public jobs is the

only surest method to objectively select the best out of the best from a competing lot; it is rooted in the fundamentals of equal opportunity, equal treatment, and equal protection; any deviation therefrom would rock the bottom of the Republic, resting upon equiponderance. State authority in every sphere of life is a sacred trust to be exercised fairly and justly by the functionaries to accomplish the purposes assigned to them by law; it is their bounden duty to do right to all manner of people, without any distinction.

13. In principle, this Court cannot perform the functions of a recommending / selection authority in service matters to substitute its opinion for that of the competent authority. On the issue, we are fortified with the decisions of the Honorable Supreme Court in the cases of Sh. Muhammad Sadiq vs. Federal Public Service Commission and others, **2013 SCMR 264**, Dr. Mir Alam Jan vs. Dr. Muhammad Shahzad and others, **2008 SCMR 960** and Dr. Shamim Tariqe Vs. International Islamic, University Islamabad through President and others **2020 SCMR 568**.

14. Primarily, it is a settled principle of law that our Constitution is based on Trichotomy as the law laid down by the Honorable Supreme Court in Ziaur Rehman's case (**PLD 1973 SC 49**) and this Court has only jurisdiction to interpret the law. This Court has no jurisdiction to take the role of the policymaker in the garb of interpretation as the law laid down by the Honorable Supreme Court in the cases of Zamir Ahmad Khan's case (**PLD 1975 SC 667**) and Zamir Ahmad Khan's case (**1978 SCMR 327**).

15. Petitioners are ex-servicemen who do not meet the criteria for appointment as a police constable on a contract basis for CPEC Project which is of paramount consideration under recruitment rules as discussed supra, therefore, we cannot allow the police constables who are unfit and qualified to be posted for such vital CPEC Project, thus no further indulgence is required on our part for the reason that this is a disciplinary force, we cannot allow the petitioners to continue in Police Force as they have been found unfit for the post of Police Constable on contract basis for CPEC Project.

16. In view of what has been discussed above, the petitioners' counsel has failed to point out any infirmity or illegality in the findings of the Committee, therefore, the petition being devoid of any merit is hereby dismissed in limine along with the pending application(s) with no order as to costs.

17. These are the reasons for our short order dated 17.3.2022, whereby we have dismissed the instant petition.

JUDGE

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