

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-4060 of 2020

(Abdullah Shah v. Home Secretary Sindh and 4 others)

Mr. Muhammad Zohaib, advocate for the petitioner

Mr. Ali Safdar Depar, AAG alongwith Mr. Raza Mina, DSP (Legal)

Date of hearing

& Decision: 23.02.2023.

ORDER

Through this petition, the petitioner has approached this Court for his appointment as Police Constable in Sindh Police as per his offer letter dated 20.06.2014 issued by the Deputy Inspector General of Police, East Zone, Karachi.

2. The facts, from a birds-eye view, are that in the year 2013 the petitioner applied for the post of Police Constable in the Sindh Police Department and after fulfilling all the formalities, he was issued the offer letter dated 20.06.2014. As per the petitioner, he continuously approached the respondent-police department for his appointment letter and to join his duty but he was not allowed on account of the pendency of two FIRs bearing No.20/2015 u/s 343/324/34 PPC and FIR No.21/2015 u/s 23(i) A SAA registered against him; and after acquittal from the aforesaid cases vide judgments dated 25.8.2017, the petitioner approached the respondents for joining the duty, however, his applications were forwarded to the IGP Sindh vide letter dated 06.02.2020 and 02.03.2020, but all in vain, compelling him to approach this court on 24.08.2020.

3. Mr. Muhammad Zohaib, learned counsel for the petitioner, argued that despite completing all legal and codal formalities for the post of Police Constable, the respondents have deprived the petitioner of his legal and fundamental right, which is illegal and unlawful act on their part; even though the petitioner moved applications to the Home Secretary for redressal of his grievances, but he was not bothered to hear the petitioner. Learned counsel for the petitioner submitted that the co-candidates who were selected along with the petitioner were also issued appointment letters and they are performing their

duties, however, only the petitioner has been singled out without legal justification. He prayed for allowing the petition.

4. The learned Additional Advocate General argued that it was established on record that the petitioner had a criminal history, therefore, he cannot be a member of the disciplined force, and does not deserve any leniency by this Court as this would hurt other members of the force if he is allowed to join the police force. The learned AAG submitted that the case of the petitioner was placed before the Sindh Police Recruitment Board in the meeting held on 08.02.2022 for reconsideration and Board withdrew its recommendation dated 01.11.2021 regarding the appointment of the petitioner as Police Constable in Karachi Range. He prayed for the dismissal of the instant petition.

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

6. The post of Constables was published in the leading newspapers, inviting applications from citizens having domicile of Sindh for general recruitment of Constable 2013-2014 vide advertisement dated 15.8.2013. On selection of successful candidates, in the districts of Karachi range, the offer letters were issued to the successful candidates, which including the name of petitioner Abdullah Shah, however, during the intervening period he was allegedly kidnapped by unknown police officials who registered two criminal cases against him and in both cases he was acquitted by the competent court of law on 25.8.2017. Respondents have alleged that the petitioner is involved in criminal cases and due to this he could not be enlisted/appointed in Police Force.

7. The question involved in the present case is whether the induction of the petitioner as a Police Constable could be denied due to his past criminal record.

8. To appreciate the aforesaid proposition, we have gone through the Sindh Civil Servants Act, 1973, and the 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.

9. It appears from the record that the petitioner was recommended by the recruitment committee vide the offer letter dated 20.06.2014 for the post of Police Constable (BPS-05) in Karachi range, and to 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 the petitioner, has already been acquitted by the learned trial Court vide judgment dated 25.8.2017.

10. However, at the same time, we are sanguine of the fact that in disciplinary force, it is expected that the persons having their character above board, free from any moral stigma, are to be inducted. Verification of character and antecedents is a condition precedent for appointment to the police force.

11. Our criminal justice is founded on the Code of Criminal Procedure, Pakistan Penal Code Qanoon-e Shahadat Order to lay norms for the admissibility of evidence. Registration of a criminal case against a person remains as an accusation of a crime or an offense till on conviction it culminates into a certainty to the guilt of a Government servant and on acquittal one is obliterated of all the allegations. The involvement of a person in a criminal case does not mean that he is 'guilty'. He is still to be tried in a Court of law and the truth has to be found out ultimately by the Court where the prosecution is ultimately conducted. In the present case, the petitioner has been acquitted of the alleged charges as portrayed by the respondents.

12. Normally a person convicted of an offense involving moral turpitude should be regarded as ineligible for Government Services. However, in cases where the Appointing Authority feels that there are redeeming features and reasons to believe that such a person has cured himself of the weakness, specific approval of the Government may be obtained for his employment.

13. In the instant case, the aforesaid guidelines would not apply, as the criminal Court has not convicted the petitioner, rather he has been acquitted from the criminal cases and it is well-settled law that once the civil servant is acquitted in the criminal case, then on this very charge he cannot be awarded in any punishment by the department because acquittal for all future purposes. The aforesaid proposition has been set at naught by the Hon'ble Supreme Court of Pakistan in the case of the *District Police Officer Mainwali and 2 others v. Amir Abdul Majid*, **2021 SCMR 420**.

14. The question before us is whether the petitioner could be deprived of a chance to serve the police department solely on the ground of past criminal records.

15. What is discernible from the above is that the only impediment to being appointed to a Government service is the conviction on an offense involving moral turpitude but involvement, which does not culminate into a proof by conviction, cannot be a way out or guise to do away with the candidature of the petitioner in terms of the offer letter.

16. 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.

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

18. 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 Police Constable (BPS-05) and if the petitioner is found fit in all respects to be admitted as Police Constable in Sindh Police, and if he is found unfit for police force, he could be adjusted on any ministerial post positively and his candidature may be processed for the appointment strictly under the Recruitment Rules for the aforesaid posts within one month from the date of communication of this order and submit compliance report through MIT-II of this Court.

19. This petition is disposed of in the above terms.

JUDGE

JUDGE