

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

## **Constitutional Petition No.D-5703 of 2022**

(Ali Haider and 5 others v. Province of Sindh and 02 others)

Raja Rashid Ali, advocate for the petitioners

Mr. Abdul Jalil Zubedi, Additional Advocate General Sindh  
along with DSP Raza Mian, I.G.P Office Karachi.

Date of hearing : 09.03.2023.

Date of Order : 09.03.2023.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, the petitioners seek directions to the respondents to issue appointment orders to them for the post of Police Constable, *inter-alia*, on the ground that through the competitive process, they succeeded in qualifying for the post of Police Constable (BPS-05), however, their candidature was rejected by the Sindh Police Recruitment Board (SPRB) on account of a past criminal record.

2. Raja Rashid Ali, advocate for the petitioners contended that the Sindh Police Department invited applications from eligible candidates against the posts of 1815 Police Constables in the Special Protection Unit (SPU) through a third-party contractor i.e. Pakistan Testing Service. The petitioners participated in the recruitment process and succeeded in all tests conducted by the recruitment committee, and finally, their character verifications were called from their respective district police, special branch and CIA vide letter dated 19.01.2022. The learned counsel submitted that requisite reports were furnished by the agencies where it was stated that criminal cases were registered at times against the petitioners. On 21.07.2022 the matter was sent to the SPRB for evaluating their suitability for the appointment as a police constable in SPU. The learned counsel submitted that the matter was thoroughly discussed in the SPRB meeting held on 31.08.2022, however, the Board after perusal of the acquittal orders / Judgments passed by the learned Trial Courts and keeping in view the previous criminal record of the petitioners, rejected their candidatures regarding appointment as police constables in the Special Protection Unit (CPEC).

3. The learned counsel emphasized that petitioners were not convicted in different criminal cases but were declared innocent by the competent court of

law, therefore, there was no occasion for the SPRB to reject their candidatures. In support of his contentions, he relied upon the decision rendered by the supreme court in the case of learned Lahore High Court in the case of Inspector General of Police Quetta and others v. Fida Muhammad and others 2022 SCMR 1583 and the decision rendered by the learned Lahore High Court in the case of Wasim Yaqoob v. Government of Punjab and others 2018 PLC (CS) 454. The learned counsel prayed for allowing the instant petition on the ground that the approach of SPRB was contrary to the conclusion reached by the courts which acquitted the petitioners.

4. The learned AAG has opposed this petition, inter-alia, on the ground that the petitioners possessed criminal records, thus they cannot be appointed to Special Protection Unit in Sindh Police; and, there is a strong likelihood that if they are appointed as Police Constable they could misuse the uniform and repeat the crime which will have a far-reaching effect in the discipline force.

5. We confronted the learned AAG with the dictum laid down by the Supreme Court in the case of Muhammad Nadeem Arif and others v. Inspector General of Police Punjab, Lahore, and others 2011 SCMR 408 and sought his explanation.

6. The learned AAG in response submitted that petitioners are not entitled to the benefits of the acquittal orders. The learned AAG further argued that it was established on record that the petitioners had a criminal history, therefore, they cannot be members of the disciplined force, and do not deserve any leniency by this Court as this would damage the image of the police force in case if they are allowed to join the police force. The learned AAG submitted that the case of the petitioners was placed before the SPRB in the meeting held on 31.08.2022 for reconsidering their appointment but the Board after discussion concluded that the petitioner's appointment in the Police force will not be a good precedent. Learned AAG asserted that if a candidate has criminal, therefore he cannot be allowed to be inducted in the ranks of disciplinary force, merely on the ground that he was based acquitted from the criminal courts. In support of his contention, he relied on the unreported order passed by the Supreme Court wherein the Supreme Court rejected the appointment of one person who was involved in criminal cases. He prayed for the dismissal of the petition.

7. We have heard the learned counsel for the parties and perused the record with their assistance.

8. The question involved in the present case is whether the appointment of the petitioners as Police constables could be denied due to their past criminal record as follows:-

S. No.	Name of petitioner	Case FIR No.	Letter No.
1	Ali Haider S/o Zulfiqar Ali	FIR No.321/2020 u/s 337 AI. 34 PPC of PS Baloch Colony	SSP/E/DIB/VF/155 dated 04.2.2022
2	Daniyal Khan s/o Saleem Khan	FIR No.371/2020 u/s 371 A. 371 B, 354, 46-B, 34 PPC of PS Jamshed Quarters, District East	SSP/CD/DIB/VC/22-909 dated 22.06.2022
3	Dilawar Nadeem S/o Nadeem Anwar	1. FIR No.306/2019 u/s 354, 147, 149, 504, 506 337 Ai. 2. FIR No.348/2020 u/s 279, 337 Hii, 34 PPC 3. FIR No.349/2020 u/s 23 (I)-A, Registered at PS Nabi Bux District City Karachi	SSP /Sec/Ver-Br/SB/467 dated 29.03.2022 No.DIGP/CIA/CRO/6014 dated 28.03.2022
4.	Bahadur Khan S/o Zarjan Khan	FIR No.154/2015, section 4 narcotics act registered at PS Bahadurabad district East Karachi	SSP/Sec/Ver-Br/SB/467 dated 29.03.2022 No.DIGP/CIA/CRO/6014 dated 28.03.2022
5	Muhammad Moiz Naveed S/o Muhammad Naveed	No.0770/2016 u/s 392, 34 PPC registered at PS Boat Basin, district South Karachi	No.SSP/South/DIB/22-294 dated 13.04.2022 No.SSP/Sec/Ver-Br/SB/467/2022/Karachi dated 29.03.2022 No.DIGP/CIA/CRO/6016 Karachi dated 28.03.2022

9. To appreciate this issue, we have examined police rules which provide a mechanism for the appointment of the police constable. The petitioners were selected subject to their character verification and medical examination, in the character verification, they were found to have been involved in the aforesaid criminal cases but were acquitted by the trial Courts. Primarily 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 and in absence whereof, prima facie, the appointment could not be made.

10. In such circumstances, this court will not sit in the appeal to give a clean chit to a person who was tried in more than one criminal case, the nature of which is heinous, though he/she was acquitted subsequently, and it is for the SRBP to evaluate and reach a conclusion whether such person involved in the heinous offense, though he/she acquitted can be appointed as a police constable. We will in such cases not substitute our viewpoint, for the reason that mere acquittal in the heinous criminal offense for multifarious reasons, including the benefit of the doubt, does not give a right to the person to be appointed in a disciplinary force, because, in our criminal justice is founded on the Code of Criminal Procedure, Pakistan Penal Code and Qanoon-e Shahadat Order to lay

norms for the admissibility of evidence and sometimes witnesses avoid to give evidence to secure them from the irony of accused and police.

11. However, at the same time we are cognizant of the fact that 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 of the guilt of a person, and on acquittal one is obliterated of all the allegations. In principle, 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.

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. 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 any punishment by the department because acquittal is for all future purposes. The aforesaid proposition has been set at naught by the Supreme Court of Pakistan in the case of *the District Police Officer Mainwali and 2 others v. Amir Abdul Majid*, **2021 SCMR 420**. However, in the present case, the petitioners have been acquitted by providing them the benefit of the doubt. Such a situation is quite different here, as petitioners seek appointment in a disciplinary force and after calling the character report of the petitioners who reported that petitioners were involved in the aforesaid criminal cases based on moral turpitude and petitioners were not permitted to join the police force though the petitioners have been purportedly acquitted from the criminal charges.

13. In such circumstances, the doctrine of vested right upholds and preserves that once a right is coined in one locale, its existence should be recognized everywhere and a claim based on vested rights are enforceable under the law for its protection. Prima-facie, no offer letters have been issued to the petitioners thus no vested right has been created yet in their favor, for the reason that merely passing the written test and interview does not hold them qualified for the post of police constable as there are other codal formalities to be fulfilled under the Sindh Civil Servant Act and / are rules framed thereunder as well as under the Police Act and rules framed thereunder.

14. The reservation shown by the Police department in appointing the petitioners as Police Constable is primarily based on the analogy that the Supreme Court in the case of *Additional Inspector General of Police Karachi & another v. Muhammad Ismail Lashari & another* 2017 PLC (CS) 279 has discouraged this practice with direction to the Inspector General of Police, Sindh to screen out all those police officials who have patchy records in their dossiers and initiate departmental proceedings against them under the law.

15. Since the petitioners have been declared unfit by the SPRB for the appointment of a police constable cannot seek relief in these proceedings. Keeping in view above mentioned facts and circumstances of the case, and the dicta laid down by the Supreme Court in the aforesaid case, the captioned Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 cannot be maintained and is accordingly dismissed. However, the observation recorded hereinabove is confined to the appointment in police force only.

**JUDGE**

**JUDGE**

Nadir\*