

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-273 of 2023

Rukhsana Laghari and

15 others

Petitioners: Through Mr. Irfan Mir Halepota, advocate

Respondents: Through Mr. Ali Safdar Depar, AAG

Date of hearing
& Decision: 06.02.2023.

ORDER

Through the captioned petition, the petitioners have assailed the vires of the notification dated 15.12.2022, issued by the Inspector General of Sindh Police (IGP)/Secretary to Government of Sindh, Police Department, Karachi, which is extracted as under:

“The Honorable Supreme Court of Pakistan passed order in judgment dated: 06.05.2016 in Civil petition Nos.493, 494, 505 to 508, 529 to 533, 601, 906 and 911 to 917 of 2015 filed by Gul Hassan Jatoi & others in which it was clarified in para-54 that the Sindh Police has (03) three independent units i.e. Executive, Technical District and Prosecution (Legal) and that police personnel appointed in terms of recruitment process cannot horizontally travel to any other unit either by way of transfer or otherwise.

02. Similarly, another judgment passed by Honorable Sindh Service Tribunal dated: 30.09.2021 in Service Appeal No.1103/2018 filed by Abdul Kareem, states that the earlier judgment of Honorable Supreme Court of Pakistan mentioned above set-asides the judgments of SST regarding creation of separate cadre including female cadre.

03. Furthermore, a separate cadre for Women is in contravention of Article-25 of the constitution of Islamic Republic of Pakistan, which clearly debar discrimination on the basis of gender.

04. Now, in compliance of above orders of Honorable Supreme Court of Pakistan and Sindh Services Tribunal, as well as Article-25 of the constitution of Islamic Republic of Pakistan, this office notification No.9182-202/E-IL/INSP, dated: 06.10.2017, regarding withdrawal of merger of Women Police & Male Police Cadre (s) into unified cadre in Sindh Police (i.e., creation of a separate cadre of Women Police in Sindh Police) is hereby cancelled / withdrawn and Unified merger of Male & Female Cadre is hereby restored.

05. Henceforth, there shall be a unified cadre of Women and Male Police officers/officials in Sindh Police Department. The combined unified seniority lists of Male and Women Police officers/officials should be issued immediately.”

2. The case of petitioners is that they are working in Sindh Police at different ranks i.e. Head Constable, Assistant Sub-Inspector, Sub-Inspector, and Inspector. Petitioners have averred that competent authority framed the Women Police Rules, 1998, resultantly women police cadre was established and petitioners were separated from male members of Sindh Police, thus cannot be deprived of the cadre strength of women police as one unit, and their merger/absorption with the male police force, in terms of

the notification dated 15.12.2022 is illegal and in contravention of Article 27 of the Constitution, which debars discrimination based on gender.

3. Mr. Irfan Mir Halepota, learned counsel for the petitioners, contended that the impugned notification issued by the Respondent No. 2 is illegal, and is in contravention of Articles 185 and 186 of Police Order 2002 (Amendment) Act 2019. Learned counsel averred that all citizens are equal before the law and are entitled to equal protection in terms of Articles 25 and 27 of the Constitution of the Islamic Republic of Pakistan. Learned counsel submitted that the Women Police "Cadre" was created under the Women Police Rules 1998 and IGP Sindh was/is not competent to nullify the Women Police Rules 1998, vide impugned notification, without the concurrence of the Government of Sindh, therefore, the notification is liable to be declared ultra vires of the constitution and law. Learned counsel placed reliance on the case of Gul Hassan Jatoi and others v. Faqir Muhammad Jatoi, **2016 PLC (CS) 1102**, and prayed for allowing the instant petition.

4. Mr. Ali Safdar Depar learned AAG, without filling the comments, argued that the impugned notification has been issued in terms of the ratio of the judgment dated 6.5.2016 passed by the Hon'ble Supreme Court of Pakistan in the case of Gul Hassan Jatoi supra. He further submitted that a separate cadre for women police is in contravention of Articles 25 and 27 of the Constitution of the Islamic Republic of Pakistan, 1973 which debars discrimination based on gender, therefore, the competent authority in compliance with the judgment passed by the Hon'ble Supreme Court of Pakistan, withdrew women police cadre and directed for the merger of male and female cadre, therefore, there is no illegality in the notification dated 15.12.2022 issued by IGP Sindh. 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 question raised in the petition is whether the creation of the women police cadre is permissible under the Police Act, 1861, read with Police Rules 1934.

7. Before we come to the issue of women's police cadre as a separate unit, it is important to understand the scheme of the Police Act, 1861, which defines "police" under section 1 to include all persons who shall be enrolled under this Act.

8. The police force is composed of (a) police officers and (b) police-men; both formally enrolled and operating under one command. Section 4 provides that the administration of the police throughout a general police district shall be vested in the Inspector-General of Police, Deputy Inspectors-General, and Assistant Inspectors-General as the Provincial Government shall deem fit. Section 7 of the Act provides that subject to such rules as the Provincial Government may from time to time make under this Act, the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-

General, and District Superintendents of Police may at any time dismiss, suspend or reduce any police-officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same.

9. The question which arises for determination here is how a cadre can be created under the Police Act, 1861, and the Rules made there under. The answer to this question lies in the judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of *Gul Hassan Jatoi and others v. Faqir Muhammad Jatoi*, **2016 PLC (CS) 1102**, where the Hon'ble Supreme Court has held the entire police establishment under a Provincial Government is one police force.

10. The appointments and enrollments of the police personnel including women police are regulated by Rule 12 of the Police Rules, 1934, which deals with three different sets of the recruitment process and there is a difference in the training courses of the police personnel. Under the Police Rules, the seniority of the Constable and Head Constable is maintained in the District, whereas the seniority of ASI and SI is maintained by the range DIG. The seniority of the Inspector in Police is maintained by the Central Police office. The training and examination of the Executive Unit are provided in the Police Rules.

11. The Hon'ble Supreme Court of Pakistan further held that there are certain employees in the police department, which are non-uniformed like ministerial staff and/or IT Department but they are recruited and regulated by the Sindh Civil Servants Act, 1973 and rules framed thereunder. The petitioners have misconstrued rule 1.3 of the Police Rules under which different establishments were made in the police force to facilitate smooth working.

12. Primarily, the concept of cadre within the police service could only be introduced if it is established that the recruitment process, training, and practical training of the members of the police force are distinct. In principle, under the police rules, the entry point of all the police personnel in executive police is common. They have a common recruitment process, police training, and practical training as prescribed under the rules and once these training after their appointments are completed, they are transferred to the different establishments under the rules. Thus, the petitioners have misconstrued things and submitted that the women police cadre was separate in the police force, and rules in this regard were framed.

13. We have examined the rules 1998 in the light of the judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of Gul Hassan Jatoi, which explicitly provides that the police force is an indivisible entity that is commanded by the IGP of the Province, who has vast powers; subject to the approval of the Provincial Government, he can frame orders or rules about the organization, classification, and distribution of the police force. Therefore, the creation of a separate cadre for women

police in the police establishment is neither warranted by the Act nor by the Police Rules, 1934 more particularly in terms of para 56 of the Judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of Gul Hassan Jatoi supra. Hence, the creation of a women's police cadre, in our humble view, does not align with the ratio of the judgment passed by the Hon'ble Supreme Court of Pakistan, for the reason that the Provincial Police Establishment is one force and there is no concept of different cadres in the police department.

14. Article 27 of the Constitution provides that no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence, or place of birth. In the police force women have a similar role as male members of the force as one unit as such creation of a women police cadre in terms of Section 46 of the Police Act, 1861 read with Section 7 thereof ought not to have been called for as the petitioners voluntarily joined the police force and they were well aware of the professional duties and now creating a new wing/cadre dealing their appointment, seniority and promotion without the concurrence of the competent authority i.e. Government of Sindh are against the spirit of Section 12 of the Police Act. In principle, rules follow the Act and in absence of such powers conferred upon the competent authority under the Act, rules cannot be framed deviating from the main Act.

15. At this stage, learned counsel heavily relied upon the judgment dated 26.01.2015 passed by the learned Sindh Service Tribunal at Karachi wherein paragraph No.25 allowed the Service Appeal of Mst. Zulekha Assistant Sub Inspector in Sindh Police Sukkur range and restored the Women Police Rules, 1998, however, we confronted the learned counsel with the decision of the Hon'ble Supreme Court of Pakistan in the case of Gul Hassan Jatoi wherein the judgment dated 13.3.2015 passed by the learned Sindh Service Tribunal Karachi in Appeals No.130 to 134 of 2014 and other connected appeals were set aside, therefore, in presence of the decision of the Hon'ble Supreme Court of Pakistan, no reliance can be placed on the judgment passed by the learned Sindh Service Tribunal at Karachi as the matter has been finally set at naught by the Hon'ble Supreme Court of Pakistan.

16. So far as the situation regarding gender equality in the police force is concerned, in principle, women have encountered enormous difficulties as they think to take the police as their career, therefore, the IGP Sindh shall ensure a better atmosphere for women police force so that they be able to work with their male colleagues without any hindrance and their service matters shall also be dealt with in terms of the ratio of the judgment passed by the Hon'ble Supreme Court of Pakistan.

17. The impugned notification dated 15.12.2022 issued by the IGP Sindh, whereby the aforesaid bifurcation of women police was reversed and the merger of male and

female police as one police force was restored, which is in line with the judgment passed by the Honorable Supreme court.

18. In view of the above facts and circumstances of the case, there is no illegality or perversity in the impugned notification dated 15.12.2022 issued by the IGP/Secretary to Government of Sindh, Police Department, Karachi.

19. This petition is devoid of merits and is accordingly dismissed with no order as to costs.

JUDGE

JUDGE

Nadir*