

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 601 of 2023

(Tofique Ahmed Vistro and another versus Province of Sindh and others)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **28.02.2024**

Date of decision : **28.02.2024**

Mr. J. K. Jarwar, Advocate for petitioners.

Mr. Asfandyar Kharal, Assistant Advocate General Sindh.

ORDER

Muhammad Iqbal Kalhoro, J. – Petitioners have filed this petition seeking declaration against the act of respondents viz. not issuing them appointment orders as illegal, null, void, ab initio as well as direction to respondents to issue them appointment orders as they have passed all required tests.

2. It is the case of petitioners that in pursuance of an advertisement, published through newspaper, had applied for the post of Police Constable (BPS-5) in Sindh Police Special Security Unit (SSU) Commandos, Hyderabad. After being subjected to a rigorous process of examination, including a physical test, they became successful. Thereafter, the reports about their credentials and character were called from the relevant quarters. In the report / letter, sent by SP Naushahro Feroze, petitioners, at serial No.16 and 41, respectively, were shown involved in criminal cases. One case against each one, however, they were acquitted by the Court on the basis of compromise. Yet the Sindh Police Recruitment Board, in its meeting held on 16.03.2023 decided to reject their application.

3. Learned Counsel placing on record an order of this Court dated 20.12.2023, passed in C. P. No. D-969 of 2022 and D-1018 of 2022, has submitted that Para No.5 and 6 of the same are applicable in this case, hence, this petition be also disposed of in the same terms. Learned AAG has conceded to his submission.

4. For convenience, Para No.5 and 6 of the order, as referred above, are reproduced below:

“5. As far as issue of registration of criminal cases or their pendency before any Court etc. against the petitioners is concerned, various Benches of this Court have dealt with this issue and decided it in favour of the petitioners, the judgments of which have been submitted by the learned Counsel in defence, as cited above. The relevant provision of law, which can be referred to and cited for the purpose of taking guidance is Section 15 of the Sindh Civil Servants Act, 1973. This stipulates that no person convicted for an offence involving moral turpitude shall, unless Government otherwise direct, be appointed to a civil service or post. This provision apparently lays down two conditions, which a person, otherwise selected on any post in the civil service, has to fulfill to get the appointment: that he is not a convict and that he is not a convict in an offence involving moral turpitude. The list of cases registered against the petitioners filed in comments by the respondents does not show that they have ever been involved in any offence involving moral turpitude, let alone convicted in any such offence.

6. The criminal cases, which were registered against them were run-of-the-mill and have already culminated in their acquittal and that too on merits. It is settled that acquittal of a person in a criminal case washes away declaration of guilt against him and he no longer can be termed as guilty of the offence, he was charged with. The stigma of conviction of an accused goes away, the moment he is acquitted by the competent Court of law. As registration of a case in this part of the country, where false implication of a person or the practice of complainant to throw a wide net to implicate as many family members of an accused as possible in a case is rampant, the same cannot be equated with a disqualification embodied under Section 15 of the Sindh Civil Servants Act, 1973 abridging the right of an individual to appointment which he acquires on being declared as successful. Furthermore, this part of the province is plagued with tribal disputes. The petitioners hail from the areas which are reportedly affected by such disputes, therefore, mere on a fact that there were certain criminal cases registered against them, they cannot be deprived of their right to appointment on the post of Police Constable, which they have earned by qualifying the required examination.”

5. The comments of respondent No.2, filed in this case, shows that that Sindh Police Recruitment Board, when came to know about registration of criminal cases against the petitioners in which they were already acquitted, decided to reject their applications. But the reasons for taking such a decision have not been articulated. The decision itself does not appear to be based on any structured exercise of discretion, and is apparently, contrary to the scheme U/S 15 of the Sindh Civil Servants Act, 1973. Neither any precedent, nor the relevant statute has been cited, which may have helped Recruitment Board form an opinion rejecting the candidature of petitioners simply on registration of a criminal case against them.

6. The Supreme Court in the case (**PLD 2010 Supreme Court 695**) Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan, who was seeking reinstatement in service after being acquitted from a murder case, but when denied by the bank, had approached the relevant tribunal and succeeded in obtaining an order in his favour, came before the Supreme Court in an appeal filed by the bank against such order. The Supreme Court has explained the maxim *autrefois acquit* stating that ultimate acquittal in a criminal case exonerates accused person completely for all future purposes vis-à-vis the criminal charge against him. Concept of such maxim is embodied in Section 403 CrPC and protection guaranteed by Article 13(a) of the Constitution. Waiver or compounding in respect of an offence has the effect of purging the offender of the crime. It may be noted that the respondent in that case was acquitted of the murder charge only on the basis of compromise and payment of Badal-i-Sulh. The Supreme Court found the said acquittal as good as acquittal on merit and dismissed the appeal of bank against his reinstatement in service. The Supreme Court in a Suo Moto Case Re: the issue as to whether compounding of an offence under section 345 CrPC amounts to acquittal of the accused person or not (**PLD 2018 Supreme Court 703**) has further endorsed this view.

7. Earlier, the Supreme Court in the case of Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department Peshawar (**1998 SCMR 1993**), holding that **all acquittals are certainly honourable**, has observed as under:

“We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of

doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals.”

8. We, therefore, do not find the decision of Sindh Police Recruitment Board rejecting the recommendation of the petitioners to the appointment sustainable in law and on correct understanding of ratio laid down in the aforesaid decisions of the Supreme Court. Consequently, the petition is **allowed** as prayed.

J U D G E

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Abdul Basit