

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No.D-1754 of 2023

Present:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Zulfiqar Ali Sangi

Date of hearing: : 03.12.2024

Date of announcement : 03.12.2024

Petitioner Gulab Son of Muhammad Soomar : through Mr. Sundar Khan,
Chachar Advocate

Province of Sindh & Others : through Mr. Asfandiyar Kharal,
AAG Sindh a/w Muhammad Akram
Rajput DSP Legal on behalf of DIGP,
Sukkur & SIP Gulzar Ahmed Abro
SSP Office Khairpur.

J U D G M E N T

MUHAMMAD SALEEM JESSAR.J- Through this constitutional petition, the petitioner has sought following reliefs:

(i) To declare that the act of respondents for non-appointment of the petitioner due to previous criminal case in which the petitioner has already been acquitted from the charge is null and void and against the spirit of law.

(ii) To direct the respondents to appoint the petitioner and issue him appointment letter for the post of Police Constable for which he has qualified.

Brief facts, relevant for disposal of instant Constitutional Petition, are; that the respondents announced vacancies of the post of 'Police Constable BPS-05' through various newspapers for submission of documents on or before its last date viz. 30.06.2021. The petitioner applied for the appointment to said post. After applying for the post of Police Constable, test was conducted by the

respondents through Pakistan Testing Service, in which the petitioner was declared successful. Thereafter, the petitioner fulfilled all codal formalities including medical checkup and submitted such certificate in concerned office. Thereafter, the respondents started scrutinizing the Character verification of the passing successful candidates through different modes wherein the petitioner was shown as accused in FIR No.82 of 2014 registered at P.S. Hingorja under Section 395 PPC. Consequently, respondent No. 6 issued a letter dated 31.01.2022 to respondent No.4 showing the petitioner having been challaned in Crime No. 82 of 2014 of P.S. Hingorja. That the record submitted by SSPs of all districts of Sindh regarding Character verification and antecedents, were scrutinized by the Recruitment Board in its meeting held on 31.08.2021 in which appointment of 29 successful candidates including the petitioner at Serial No. 2, was rejected, and such letter was issued to respondent No. 5 for intimation on 06.09.2022. Thereafter, the petitioner was acquitted from the charge of aforesaid criminal case by Additional Sessions Judge, Gambat vide judgment dated 09.10.2021, hence the petitioner approached respondent Nos. 2 to 6 and requested for his appointment as Police Constable BPS-05 because he had been acquitted from the charge of criminal case due to which his appointment was refused, but the respondents did not pay any heed, thus petitioner has filed instant constitutional petition seeking therein aforementioned reliefs..

Learned counsel for the petitioner submitted that the criminal case in which petitioner was alleged to be involved, was false, fake and concocted one and therefore, he was acquitted of the charges in said case by means of judgment dated 09.10.2021 passed by Additional Sessions Judge, Gambat vide Sessions Case No.20 of 2015 Re-The State v. Shahmir and others. He, therefore, submitted that once the petitioner got acquittal, he may be presumed

to have been acquitted honourably, as such, refusal on the part of respondents to appoint him was unjustified. In support of his contentions he placed reliance upon unreported Order dated 28.02.2024 passed by this Bench in case of *Mehmood Khan & others v. Province of Sindh*, through Home Secretary Sindh as well as the Order dated 22.10.2024 passed in Civil Petitions No.81-K and 82-K of 2024 by Honourable Apex Court and submitted that the petitioner being qualified, young one having broad shoulders is capable to carry out the services and perform his duty as Police Constable and whatever stigma shown against him, has also been removed through judgment passed by the concerned (trial) Court hence, he prayed for allowing this petition.

Mr. Asfandyar Kharal, learned Assistant Advocate General Sindh assisted by the police officials present, opposed the petition; however, could not controvert the fact that this Court as well learned Apex Court have already given dictum in this regard by treating the petitioner to be entitled for the job/employment in the Government Department.

We have heard learned counsel for petitioner, as well as learned Assistant Advocate General and have perused the record placed before us.

The moot point to be decided in this Constitutional Petition is; as to whether after acquittal in a criminal case, the accused, who was declined his appointment on the basis of his involvement in a criminal case, is entitled to be appointed in service?

This point has elaborately been dealt with by Honourable Supreme Court in case of *CHAIRMAN AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN and another Vs. MUMTAZ KHAN*, reported as **PLD 2010 SC 695**.

The facts in said case were that the respondent in that case namely, Mumtaz Khan, was a Mobile Credit Officer serving with the Agricultural Development Bank of Pakistan when he was implicated in a case of murder. As a result of trial of that criminal case the respondent was convicted by learned

Sessions Judge, Lakki Marwat for an offence and was sentenced to imprisonment for life. The respondent preferred an appeal against his conviction which was dismissed by the Peshawar High Court, Dera Ismail Khan Bench. The respondent did not challenge his conviction and sentence any further and after a few months of the decision of his appeal, an application was submitted by him before learned Sessions Judge, Lakki Marwat seeking his acquittal on the basis of a compromise arrived at between him and heirs of the deceased. That application was allowed and consequently the respondent was acquitted of the charge consequent upon the compromise. Prior to this, on account of his aforesaid conviction, the respondent had been removed from service. However, after earning his acquittal from the criminal Court on the basis of compromise, the respondent filed a departmental appeal seeking his reinstatement in service with all back benefits but that appeal was dismissed by the competent authority. Thereafter the respondent preferred an appeal before the Federal Service Tribunal, Islamabad which was allowed by a majority of two against one and the respondent was ordered to be reinstated in to his service with all back benefits. The said judgment was assailed by the appellant Bank before Honourable Supreme Court through C.P.L.A. No.1391 of 2000 wherein leave to appeal was granted to consider, *inter alia*, the following question:

(b) Whether a convicted person, who is released after payment of Diyat amount, could be said or could be declared as a person acquitted honourably and in that eventuality, could such a person, who is released on payment of Diyat, **was liable to be reinstated?**

The Honourable Supreme Court answered the question in affirmative by holding as under:

"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 obtained 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 purpose vis-à-vis the criminal charge against him. Concept of such maxim is embodied in Section 403 Cr.P.C 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 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".

It was further held:

"8. The provisions of the first proviso to subsection (1) of section 338-E, P.P.C. clearly contemplate acquittal of an accused person on the basis of compounding of an offence by invoking the provisions of section 310, P.P.C. and the effect of such compounding has also been clarified in most explicit terms by the provisions of subsection (6) of section 345, Cr.P.C. in the following words:--

"The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded."

9. The legal provision mentioned above leave no ambiguity or room for doubt that compounding of an offence of murder upon payment of Badal-i-Sulh is not a result of payment of Diyat which is a form of punishment and that such compounding of the offence leads to nothing but an acquittal of the accused person. It has already been clarified by this 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 as follows:--

"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."

The said precedent case also involved a question of reinstatement in service of an accused person implicated in a criminal case who had been acquitted by the criminal Court and this Court had declared that an acquittal had no shades and there was no concept of Honourable or dishonourable acquittals. It had specifically been noted by this Court in that case that there could also be cases involving acquittals on the basis of compromise between the parties and after raising a query regarding the status of such acquittals this Court had hastened to add that "All acquittals are certainly honourable". If that be the case then the respondent in the present case could not be stigmatized or penalized on account of his acquittal on

the basis of compromise. In view of the discussion made above and also in view of the novel situation presented by this case the precedent cases cited by the learned counsel for the appellants have been found by us to be missing the mark, if not irrelevant to the controversy in hand.”

Prior to this, a Full Bench of the learned Apex Court in the case of *Dr. MUHAMMAD ISLAM Vs. GOVERNMENT OF N.W.F.P. through Secretary, Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others*, reported in **1998 SCMR 1993** had laid down similar dictum. The facts in that case were that a case under section 302/34, P.P.C. was registered against appellant in that case namely, Dr. Muhammad Islam and Fazal Haqqani on the statement of complainant Muhammad Rahim for the murder of one Sher Zamin. The Additional Sessions Judge, Mardan, after recording statement of the complainant, passed order to the effect that the complainant in his statement did not charge the accused for the commission of the offence and that in view of such statement, the S.P.P. also gave statement that he wanted to withdraw from the prosecution against the accused. In this view of the matter, the accused were discharged/acquitted from the charge leveled against them.

At the time of alleged incident, the accused / appellant was posted as Veterinary Officer (Health) (B-17), Incharge Veterinary Dispensary, Katlang District Mardan. He was suspended from service because of his involvement in aforesaid murder case. However, consequent upon his acquittal, the appellant moved an application for his reinstatement in service which was allowed by the Competent Authority and in consequence thereof, appellant was reinstated in service. However, the intervening period of his absence was treated as extraordinary leave without pay. The appellant filed representation against said order which was rejected by Secretary Food, Agriculture, Livestock and Cooperative Department, Peshawar. The appellant then filed appeal before the N.W.F.P. Service Tribunal praying therein for payment of salary and allowances to him for the said period. This claim of the appellant was contested by the Government on the ground that acquittal of the appellant was based on a compromise between the parties. This being the position, acquittal of the appellant cannot be held to be **honourable** so as to entitle him to full pay and allowances for said period. The Tribunal vide its decision, dated 24th of August, 1994 dismissed the appeal, holding that it is for the revising authority

or appellate authority to form its opinion on the material placed before it, whether such a person has been honourably acquitted or not.

The appellant challenged said decision before Honourable Supreme Court and leave to appeal was granted on 14th of May, 1995 and ultimately, Honourable Supreme Court allowed the appeal and declared that the appellant was entitled to grant of arrears of his pay and allowances in respect of the period he remained under suspension on the basis of registration of murder case against him. It was held as under:

*“Even in the cases where benefit of doubt has been given to the accused, it cannot be said that the charge has been established by the prosecution. The accused are to be treated as innocent unless it is proved on the basis of best possible evidence that they are connected with the Commission of the crime and as such, deserve to be convicted to meet the ends of justice. The doubt itself shall destroy the very basis of the prosecution case. In this view of the matter, the accused shall be deemed to have honourably been acquitted even where the benefit of doubt has been extended to them. In case of *Mian Muhammad Shafa v. Secretary to Government of the Punjab, Population Welfare Programme, Lahore and another* (1994 PLC (C.S.) 693), following observations were made:--*

"There is hardly any ambiguity in these provisions and they do not present any difficulty. We are in no doubt that the provisions of clause (a) are attracted by the facts on the ground that the appellant was acquitted of the charge against him. Although, the department claims that this was the result of benefit of doubt, we would hold that the acquittal is honourable within the meaning of this rule. As a matter of fact, all acquittals are honourable and the expression 'honourable acquittals' occurring in clause (a) seems to be superfluous and redundant. It is one of the most valuable principles of criminal jurisprudence that for a judgment of conviction it is the duty of the prosecution to establish its case beyond all reasonable doubt. If it fails to do so, the accused will be entitled to acquittal and such acquittal will be honourable, even if it is the result of a benefit of doubt. The expression 'benefit of doubt' is only suggestive of the fact that the prosecution has failed to exonerate itself of the duty of proving its case beyond all reasonable doubt. In the present case, therefore, the appellant's acquittal of the charge of misconduct and his consequential reinstatement in service entitled him to full pay and remuneration of the entire period from 6-10-1980 to 12-2-1986 under F.R.54(a) of the Rules. We hold that the provisions of F.R. 54(b) are not relevant and that they could not have been pressed into service by the Department in deciding the matter."

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."

Two Division Benches of this Court, Bench at Sukkur, while following the above dictum laid down by Honourable Supreme Court, passed similar judgments in C.P. Nos.D-969 and D-1018 of 2022 and C.P.D-601 of 2023.

Recently, on 22.10.2024, a two members' Bench of Honourable Supreme Court, while deciding Civil Petitions No.81-K and 82-K of 2024 took similar view.

In said case, the petitioner viz. The Government of Sindh and other officials sought leave to appeal against the judgment dated 20.12.2023 passed by this Court.

The facts in said case were; that the petitioners had posted an advertisement on its official website inviting applications from eligible candidates to fill 894 posts of Police Constables (BPS-5). The respondents, in response thereto had filed their respective applications. The respondents and other eligible candidates were subjected to written test conducted by Pakistan Testing Service ('Service'). After completion of the process, the respondents were recommended for appointment against the advertised posts. The Sindh Recruitment Board (Board) had sought reports from the Deputy Inspector General of Police, Sukkur Range regarding their character and antecedents. In response, it was reported that respondents were involved in distinct criminal cases and upon conclusion of their respective trials they were acquitted. The Board however, in its meeting held on 22.6.2022 rejected the recommended appointment of the respondents, therefore, the respondents had filed constitutional petitions before this Court against their non-appointment. The said petitions were allowed vide judgment dated 20.12.2023 against which the petitioners sought leave to appeal.

During arguments, Additional Advocate General, relied upon paragraph 4.1.18 of the Revised Sindh Police Recruitment Policy, 2022 ('policy of 2022')

in support of his contention that a convicted candidate was not eligible to be offered appointment irrespective of the nature of the offence and the period of sentence.

In such circumstances, it was held by the Apex Court as under:

“The paragraph 4.1.18 of the policy of 2022 explicitly provides that "a candidate who is found to have been convicted in a Court of law in any criminal case, shall not be offered appointment irrespective of the nature of the offence and the period of sentence". A plain reading of the said provision clearly shows that the disqualification remains effective till subsistence of conviction. By no stretch of the imagination, the paragraph can be construed as extending the disqualification to a candidate who has been acquitted upon conclusion of a criminal trial. The High Court has correctly interpreted the provisions of the policy of 2022 and section 15 of the Sindh Civil Servants Act, 1973. The learned Additional Advocate General was not able to persuade us that the impugned judgment suffer from any legal infirmity requiring our interference. In the circumstances, leave is refused and the petitions are accordingly dismissed.”

Before touching the case-law relied upon by the official respondents, we deem it proper to go through the order passed by Additional Sessions Judge, Gambat whereby the petitioner was acquitted from the charge of criminal case registered against him and others. From perusal of said order, it reveals that the petitioner and other accused in said criminal case were acquitted as the prosecution could not prove its case against the petitioner / accused. It may be specifically pointed out that they were not acquitted on the basis of benefit of doubt having been extended to them but because the complainant and other prosecution witnesses had clearly exonerated them from charge. For the sake of convenience relevant portion from the said order is reproduced as under:

“Further, deposing in court, eyewitnesses Allah Bux, Ali Murad and Ghulam Asghar in their evidence have not implicated the present accused in the alleged incident, while stating that at the time of incident offenders were with muffled faces. Record reveals that evidence of complainant Raja could not be recorded as he died during proceedings of the case while most important witnesses of case having resiled from their earlier version, this case is short of direct ocular testimony as to alleged offences of dacoity as required by article 70 of Qanun-i-Shahadat 1984.

11- Furthermore, prosecution has failed to produce the remaining prosecution witnesses including investigating officer Riaz Hussain Shar hence the presumption shall be drawn that

had the prosecution produced those witnesses in Court, they would also have not supported its case.

12- Finally, during investigation, nothing from alleged robbed property could have been recovered from possession of accused nor there is any other piece of corroboratory nature on record which should connect the present accused with the alleged offences.

13- For above reasons, I have come to the conclusion that neither there is any direct nor corroboratory incriminating evidence on record against accused hence I reply this point as not proved.”

Now we advert to the case-law relied upon by the official respondents who have also annexed copies of said judgments alongwith their comments / written statements.

The Order passed by a Division Bench of this Court in C.P. D-5703 of 2022 is distinguishable and not applicable for the reason that after passing of aforesaid judgment other Division Benches of this Court have taken a contrary view in the judgments dated 20.12.2023 and 28.02.2024 and secondly; that in that case relied upon by the respondents, the petitioner / accused was acquitted on the basis of **benefit of doubt** which is evident from the observations made in para 12 of the order to the effect, *“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..”* However, petitioner in the present case was not acquitted on the basis of **benefit of doubt** but he was acquitted because prosecution did not succeed in connecting him with alleged offence and so also because the alleged eyewitnesses in that case fully exonerated him.

In C.P. No.D-6135 of 2023 and other connected petitions, decided by another Division Bench of this Court the petitioners claimed that they had qualified the written test as well as interview including physical fitness test for appointment as Police Constable in the Police Department; however, the

respondents refused to issue formal appointment orders. Admittedly, the petitioners in that case were implicated in some criminal cases; however, those cases were either disposed of in “C” Class by the concerned Courts, or compromised under Section 345(2) Cr.P.C. or acquittal orders were passed by the concerned trial court under Section 249-A and 265-K Cr.P.C.

In said petitions ultimately the petitions of those petitioners were dismissed whose criminal cases were disposed of either on the basis of compromise Under Section 345(2) Cr.P.C. or acquittal orders were passed by the concerned trial court under Section 249-A and 265-K Cr.P.C. However, in respect of those petitioners whose cases were disposed of in “C” Class it was held as under:

“Insofar as the cases wherein the Police Report filed under Section 173 Cr.P.C. have been cancelled in “C” class, are concerned, the opinion formed by this Court shall not apply and their cases may be considered by the Respondents in accordance with law without being influenced by the above findings. Their petitions are allowed to this extent.”

Needless to reiterate that in present case the petitioner was neither acquitted U/s 249-A or 265-K Cr.P.C nor because of the fact that any compromised had arrived at between the parties, but, as stated above, he was acquitted because prosecution could not produce any evidence to connect him with the commission of alleged offence, thus the case of the petitioner is at par to the cases of those petitioners in above cited case whose cases were disposed of in “C” class, therefore above cited case is also distinguishable.

In Civil Appeal No.441 of 2021, decided by a Full Bench of Honourable Supreme Court, the facts were; that father of the respondent was Manager in the appellant National Bank of Pakistan and died while he was in service of the Bank. The respondent filed Writ Petition No. 52-A/2013 before the Peshawar High Court for his appointment in the National Bank under son-quota. The Writ Petition was allowed vide judgment dated 10.12.2013 and the appellants were directed to appoint the respondent on regular basis on any post commensurate to his qualification. This judgment was also upheld by learned Apex Court vide its esteemed order dated 23.02.2015 passed in Civil Petition No. 235/2014. Thereafter, the appellant Bank issued appointment letter dated 24.06.2015 and

directed the respondent to join the duty as Cashier within a period of 30 days. However, on coming to know that the respondent was involved in a criminal case registered vide FIR No.1172/2013 dated 23.11.2013 under Section 302 PPC at Police Station Hawalian, District Abbottabad for committing murder of his wife, he was not allowed to join the duty. Later on, the respondent was acquitted by the learned Trial Court vide judgment dated 02.05.2019 while exercising the powers under Section 265-K Cr.P.C. After his acquittal, he filed Writ Petition No. 830-A/2019 before the Peshawar High Court with a prayer that the appellants may be directed to take charge from him as per appointment order dated 24.06.2015. The Peshawar High Court vide order dated 22.09.2020 accepted the Writ Petition filed by the respondent and directed the appellants to allow the respondent to join his duty in pursuance of the appointment order dated 24.06.2015. Being aggrieved by said order, the appellants viz. President National Bank of Pakistan and others called in question the vires of judgment dated 22.09.2020 passed by Peshawar High Court, Abbottabad Bench whereby the Writ Petition filed by the respondent in that case was allowed and the appellants were directed to allow the respondent to join his duty in pursuance of appointment order dated 24.06.2015. The appellant viz. President, National Bank of Pakistan challenge said judgment passed by Peshawar High Court before Honourable Supreme Court and ultimately the appeal was allowed and the judgment of Peshawar High Court was set aside.

This case is also distinguishable as in said case the accused / respondent was not acquitted after full-fledged trial but consequent upon allowing his application under Section 265-K Cr. P.C. and such fact was specifically mentioned in the judgment of Honourable Supreme Court. For the sake of convenience relevant portion from the judgment is reproduced hereunder:

“We are not oblivious of the fact that although the respondent was involved in a criminal case of murder of his wife and was acquitted subsequently pursuant to proceedings carried out under Section 265-K Cr.P.C. However, it is settled law that even if the allegations leveled in the FIR are admitted to be false, even then without recording of evidence, it cannot be said that there was no probability of conviction of the accused. In order to ascertain the genuineness of the allegations, the Trial Court ought to have allowed the prosecution to lead evidence. Even otherwise, this Court in Model Customs Collectorate, Islamabad Vs. Aamir Mumtaz Qureshi (2022 SCMR 1861) and State Vs. Raja Abdul Rehman (2005 SCMR 1544) has categorically held that in appellate or revisional proceedings,

the same sanctity cannot be accorded to acquittal at intermediately stage such as under Section 249-A or 265-K Cr.P.C. as available for those recorded and based on full-fledged trial after recording of evidence.”

Now coming to the last judgment relied upon by the official respondents, viz. CIVIL PETITION No. 3122 OF 2020 which was decided by a Full Bench of Honourable Supreme Court in the case of *Faraz Naveed Vs. District Police Officer Gujrat and another*.

The facts in said case were; that the petitioner in that case was appointed as ASI through Punjab Public Service Commission. However, subsequently he was indicted in FIR No.916/2014 lodged under Section 302 PPC and Section 6/7 ATA read with Article 155-C of the Police Order, 2002. After full-fledged trial, the ATC Court awarded him death sentence under Section 302 P.P.C and under Section 7 ATA. The petitioner was also convicted under Article 16 (d) of the Police Order, 2002 and sentenced to undergo imprisonment for three years and also to pay fine. The petitioner challenged his conviction in Cr. Appeal No.500/2016 which was allowed by Lahore High Court and the petitioner was **acquitted on benefit of doubt**. While he was in jail, he was served with a show cause notice on 08.11.2014 with the statement of allegations. After departmental inquiry, the petitioner was dismissed from service vide Dismissal Order dated 10.01.2015. After acquittal, the petitioner had filed a departmental Appeal but it was dismissed, thereafter, he filed a Service Appeal bearing No.2541 of 2019 before the Punjab Service Tribunal which was also dismissed vide impugned judgment dated 22.09.2020. In these circumstances, the petitioner sought leave to appeal against the judgment of Punjab Service Tribunal, Lahore.

The said judgment is also distinguishable for the simple reason that in said case the accused / respondent was acquitted on the basis of **benefit of doubt** having been extended to him by the trial Court, which is not the position in instant case but, in fact, the petitioner / accused in this case was acquitted by the trial Court as the prosecution miserably failed to prove its case against the petitioner, besides, the complainant and other witnesses had **completely exonerated** him from the criminal charge. For the sake of convenience the relevant portions from the judgment of Honourable Supreme Court in the case of Faraz Naveed, supra, are reproduced as under:

“If the acquittal is found as a result of extending benefit of doubt or some other technical reasons, there is no bar for initiation of departmental enquiry and it is the prerogative rather an onerous responsibility of the employer to C.P.No.3122/2020 -6- consider nature of offence for an appropriate action interdepartmentally.....

22. As discussed hereinabove, the law is well settled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate....

16. Benefit of doubt, as of right, is to be given to the accused when there is equal possibility of the accused being guilty or not guilty. Ref: Muhammad Ramzan versus The State (PLJ 1984 SC 61). If the facts and circumstances of the prosecution case are susceptible and amenable to two interpretations, one in favour of the prosecution and the other in support of accused, then in such eventuality, the benefit of doubt would be extended to the accused but the employer, while considering the issue of reinstatement as aftermath of acquittal of an already dismissed employee, shall have unbridled right and authority to dwell on and appraise the antecedent and fitness of such employee including the job profile and severity of the charges leveled against them.....

So, it is for the department to examine fairly and equitably whether the petitioner has been completely exonerated or not

We deem it proper to point out at this juncture that in case of Faraz Naveed (*Supra*), Honourable Supreme Court has also discussed the case of Dr.Muhammad Islam v. Government of N.W.F.P through Secretary, Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others (1998 SCMR 1993), which has been relied upon by learned counsel for the petitioner and has elaborately been discussed above. It is to be noted that the Full Bench of learned Apex Court in the case of Faraz Naveed (*supra*), has not held that the law enunciated in the case of Dr. Muhammad Islam is not a good or Bad law but has only distinguished the judgment, therefore it is clear that the judgment passed by the Apex Court in the case Dr. Mohammad Islam (*supra*), still holds field. While distinguishing the judgment, it was held as under:

“The reading of judgment in the case of Dr. Muhammad Islam, (supra) unambiguously leads to the conclusion that neither in this case any charge was framed nor any conviction was recorded but in the instant case a serious charge of murder was proved in the Anti-Terrorism Court and the petitioner was convicted for death penalty however in appeal, he was extended benefit of doubt which resulted his acquittal.”

It is reiterated that in instant case the petitioner was acquitted by the trial Court i.e. Additional Sessions Judge, Gambat, vide judgment dated 9th October, 2021 as the prosecution failed to prove its charge against the petitioner/accused. There is no mention, at all, in said order that accused/petitioner is being acquitted by extending him **benefit of doubt**.

In view of above, while bowing down before the principle enunciated by the Superior Courts in the judgments relied upon by the official respondents, it may be observed that said judgments are distinguishable and not attracted to facts and circumstances of instant case.

The upshot of above discussion is that the petitioner has succeeded in making out a case for grant of instant petition. Accordingly, and in view of above legal position, we are inclined to accept the petition and declare that the action of Sindh Police Recruitment Board rejecting the recommendation of petitioner for his appointment is not sustainable in the eye of law. Consequently, the petitioner who otherwise had made out a case for his appointment is eligible/entitled for his appointment. The petition in view of above is hereby allowed as prayed. The respondents are directed to issue appointment order in favour of the petitioner within 15 days from the date of this Judgment.

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Approved for reporting.

Sukkur:

Dated: 03.12-2024.

Ihsan/PA