

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No. D-293 of 2020

Present:

Muhammad Faisal Kamal Alam
and Yousuf Ali Sayeed, JJ

Petitioners : Adil & others, through Ashfaque
Nabi Qazi, Advocate.

Respondents Nos.1 to 4 : Rafique Ahmed Dahri, AAG.

Respondents Nos.5 to 7 : Nemo

Date of Hearing: 15.10.2024

ORDER

YOUSUF ALI SAYEED, J.- The Petitioners were apparently appointed as constables in the Provincial Police Department pursuant a recruitment process undertaken in the year 2014, which came up for scrutiny before the Supreme Court of Pakistan in Human Rights Case 16082-S of 2015 as part of a larger issue of irregular appointments, with a Committee being constituted by the Court vide an Order dated 23.12.2015 to conduct a probe into the matter and weed out persons who were found to have been appointed illegally. The operative paragraph of that Order reads as follows:

“17. The aforesaid Committee shall examine all the appointments made in all Wings, Units, Zones including different units of SRPs (except those enquired by DIG Munir A. Shaikh earlier) and in all other Districts of Sindh on case to case basis and shall record their findings. In case if it is found that the appointments made are illegal, they shall be removed from service after required show cause notice on submission of the proposed report before this Court. The Members of the Selection Board which recommended their appointments shall be proceeded against. Secretary Establishment Division shall proceed against PST Officers, who were the Members of the Selection Board for illegal appointments and Chief Secretary Sindh or any other competent authority shall proceed against Provincial Police Officer who was Member of such Selection Board. The aforesaid Committee shall complete its report within three months from the date of communication of this order.”

2. The appointments of the Petitioners were then scrutinized accordingly, with the exercise culminating in Order No. SSC/3736-50/2016 dated 20.09.2016 issued by the Senior Superintendent of Police Tando Muhammad Khan (the “**Subject Order**”), whereby they were discharged from service along with the other appointees named therein.

3. As it is descensible from the Memo of Petition, the Subject Order was assailed by the Petitioners through departmental appeals before the Deputy Inspector General of Police, Hyderabad Range, which were dismissed by the functionary through a consolidated Order dated 14.12.2016, with it being observed that an appeal does not lie under Service Rule 12.21 from an order of discharge from service. Thereafter, the Subject Order as well as the Order dated 14.12.2016 were impugned by the Petitioners before the Sindh Service Tribunal (the “**Tribunal**”), but their Appeals were apparently dismissed in view of another Order of the Supreme Court made on 26.12.2016 in Civil Petition for Leave to Appeal No. 634-K of 2016, 635-K of 2016, 644-K of 2016, 645-K of 2016 and 646-K of 2016 (Deputy Inspector General of Police, Larkana Range and others Vs. Abdul Hafeez Kalwar), whereby a Centralized Re-examination Committee had been formed for scrutinizing the cases of those police personnel who had been dismissed/discharged or removed from service.

4. The Order dated 23.01.2017 made by the Tribunal in the matter of the appeal preferred by the Petitioner No.6 is the only one of such Orders that has been placed on record, with it being stated by counsel that the manner of disposal remained consistent across all the appeals as were preferred by the Petitioners. The final paragraph of that Order reads as under:-

“We have considered the arguments advanced at Bar, the learned Advocate General, Sindh was present on Court’s notice had apprised in appeal No.2504/2016, that the order of the Honourable Supreme Court cannot be read in piecemeal. Though there was no consent on the part of Appellant yet it is applicable to all cases of dismissal, discharge or removal of police personnel employed during 2012 to 2015 in all force to the case of Appellant who was appointed in the year 2014. We are of the considered view that the order of Honourable Supreme Court is binding under Article 189 of the Constitution of Islamic Republic of Pakistan, 1973 on this Tribunal. The Centralized Re-examination Committee after giving advertisement would re-assess the recruitment of affectess. In view of the above and in the light of the order of Apex Court, the appeal stands disposed of.”

5. After the Petitioners had remained unsuccessful before the Re-examination Committee, the present Petition was then preferred on 02.03.2020 so as to impugn the Subject Order, with it being prayed that the same be declared *ultra vires* the Removal from Service Ordinance (Special Powers) Sindh Ordinance, 2000 (the “**RSO**”), that all subsequent proceeding emanating therefrom be quashed and that the Petitioners be deemed not to have been discharged and to continue to be in the service with entitlement to all back benefits from 20.09.2016.
6. Learned counsel for the Petitioners argued that the Subject Notification ran contrary to the spirit of the Order made by the Supreme Court on 23.12.2015, as the eventuality contemplated in the event of an appointment being found to be illegal was that of the appointees removal from service under the RSO, rather than his/her discharge. He argued that action of discharge was alien to the RSO, which was the relevant law that ought to have been followed in the matter, but the Respondents had wrongly resorted to the Police Rules 1934 so as to discharge the Petitioners from service so as to frustrate the departmental appeal, and for its part, the Tribunal had failed to properly decide the matter on merits as its determination had been coloured by the subsequent Order made by the Supreme Court on 26.12.2016.

7. Having considered the matter, we are of the view that the matter falls within the competence of the Tribunal, hence challenge to the Subject Notification does not lie under Article 199 of the Constitution in view of the bar set out in Article 212 thereof. Indeed, the Petitioners have themselves approached the Tribunal and appear to have accepted the manner in which their Appeals were decided as they have awaited the outcome of proceedings before the Re-examination Committee prior to igniting this fresh challenge. Suffice it to say that the same cannot be countenanced, for if the Petitioners were aggrieved by the decision of the Tribunal and wished to advance their challenge to the Subject Notification, the appropriate course was for them to have approached the Supreme Court. When queried on the matter, learned counsel for the Petitioner sought to contend that the Petitioners had been discriminated against by the Re-examination Committee as the requirement of a local domicile had been waived in the cases of the Respondents Nos. 5 & 7, who had been appointed, and invited attention to Prayer Clause-C seeking a declaration to that effect. If anything, that contention suggests that as matters stand, the grievance, if any, of the Petitioners arises out of the proceeding of the Re-examination Committee, which have not been impugned before us, and a disparate prayer predicated on the assertion of those Respondents having been unduly appointed does not even otherwise serve to advance the cause of the Petitioners for their own appointment.

8. In view of the foregoing, the Petition stands dismissed along with the pending miscellaneous application.

JUDGE

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