

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-4667 of 2023

(*Atta Muhammad v Province of Sindh & others*)

Date

Order with signature of Judge

Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul\_Karim Memon

**Date of hearing and Order: 11.12.2024**

Mr. Zaheer Ahmed Ujjan advocate for the petitioner

Mr. Ali Safdar Depar, Assistant AG

SI Muhammad Rizwan, PS Malir City Karachi

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**ORDER**

**Adnan-ul\_Karim Memon, J:** The petitioner Atta Muhammad requests this court to order the respondent-Police Department, to issue him the appointment letter for the post of Police Constable (SPF-490), District Malir, as he has been declared a successful candidate, in the final merit list, for the subject post.

2. The facts of the case are that the petitioner was selected for the post of Police Constable in District Malir in 2022. However, during the verification process, he was found involved in a criminal case (FIR No. 395/2020). Although he had already been acquitted in that case in 2021, before the initiation of the recruitment process, however, the Police authorities have withheld his appointment letter on the aforesaid annology.

3. Learned counsel for the petitioner contends that this refusal is unjustified and discriminatory. Learned counsel argued that despite completing all legal and codal formalities for the post of Police Constable, the respondents have deprived the petitioner of his legal and fundamental right, which is an illegal and unlawful act on their part; even though the petitioner moved applications to the Home Secretary for redressal of his grievances, but he was not bothered to hear the petitioner. He further submits that the ratio of the judgment of the Supreme Court as well as this Court in Constitution Petition No. D-6135/2023 (Re. *Abdul Ghani Vs. P.O Sindh*) & other connected petitions do not apply to his case as the petitioner had already been acquitted in the subject case before applying for the post as such the applicant cannot be disqualified to ask for appointment letter for the subject post. Learned counsel referred to the case of *Director General Intelligence Bureau Islamabad Vs. Muhammad Javed* (2012 PLC CS 913) argued that the acquittal of a Civil Servant could not be taken as his disqualification as this cannot be labeled as his conviction to entail consequences of his disqualification from service. He added that the law does not restrict such appointment in civil/public service on account of past criminal record, however, Section 15 of the

Sindh Civil Servants Act, 1973 provides that no person convicted for an offense involving moral turpitude shall unless the government otherwise direct, be appointed to a civil service or post, which is not the case in hand. He argued that the petitioner was recommended by the recruitment committee for the post of Police Constable (BPS 05), however, his appointment order has been withheld by the police department on account of his past criminal record as discussed supra from whom the petitioner, has already been acquitted by the learned trial Court. Learned counsel further submitted that 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. Learned counsel next argued that it is well-settled law that once the aspirant candidate is acquitted in the criminal case, then on this very charge, he cannot be awarded any punishment by the recruitment agency because acquittal is for all future purposes. Learned counsel relied upon the case of the *District Police Officer Mainwali and 2 others v. Amir Abdul Majid*, **2021 SCMR 420**, and argued that the aforesaid proposition has already been set at naught by the Supreme Court as such this court is not required to disagree with the ratio of the judgments discussed supra by relying upon the judgment of this Court in the case of *Abdul Ghani* supra. He prayed for allowing the petition.

4. The learned Additional Advocate General argued that it was established on record that the petitioner had a criminal history, therefore, he cannot be a member of the disciplined force and does not deserve any leniency by this Court as this would hurt other members of the force if he is allowed to join the police force. The learned AAG submitted that the case of the petitioner was placed before the Sindh Police Recruitment Board in the meeting for reconsideration and the Board withdrew its recommendation regarding the appointment of the petitioner as Police Constable. Learned AAG further submitted that the Supreme Court has held that acquittal in criminal cases does not fully exonerate an accused, especially when the trial court did not allow the prosecution to present evidence. He added that the Supreme Court has emphasized that such acquittals cannot be given the same weight as those based on a full trial. He added that the Supreme Court observed that they were justified in prioritizing the integrity of their operations and public trust and dismissed the case of the candidates. Learned AAG emphasized that the Sindh Police Recruitment Board believes that individuals with criminal records, regardless of the outcome of the case, are not suitable for sensitive positions in the police force. Learned AAG cited the judgment of the Supreme Court in the case of *President National Bank of Pakistan Vs. Waqas Ahmed Khan* (**2023 SCMR 766**) argued that the Supreme Court

has declined relief to the private respondent in that case on the premise that sanctity cannot be accorded to acquittal under section 249-A or 265-K Cr.P.C. Furthermore the Supreme Court in the case of *Faraz Naveed Vs District Police Officer Gujrat 2022 SCMR 1770* has held that the police force is a disciplined force with cumbersome accountability and responsibility of maintaining law and public order in the society and populace, therefore, any person who wants to be part of the disciplined force should be a person of utmost integrity and uprightness with unimpeachable/spotless character and clean antecedents; that despite the acquittal, it is the privilege and prerogative of Sindh Police Force. So, it is for the department to examine fairly and equitably whether the petitioner has been completely exonerated or not and his further induction may not become a constant threat to the discipline of the police force and public confidence and may also not demoralize and undermine the environment and frame of mind of the upright and righteous members of the force, therefore a person having criminal antecedents would not be fit to be offered or appointed in Police Force. He prayed for the dismissal of this petition on the same analogy.

5. We have heard learned counsel for the parties and have perused the material available on record with their assistance and case law on the subject issue.

6. The issue for determination is whether a person acquitted in a criminal case can be disqualified from the police constable position based solely on the previous FIR.

7. To appreciate the aforesaid proposition, we have gone through the Sindh Civil Servants Act, 1973, and the rules framed thereunder as well as Police Rules, 1934, and Disciplinary Rules, 1988, but could not come across the provision which restricts such appointment in civil/public service on account of pendency of a criminal case, however, Section 15 of the Sindh Civil Servants Act, 1973 provides that no person convicted for an offense involving moral turpitude shall unless government otherwise direct, be appointed to a civil service or post, which means that a conviction does not automatically disqualify a candidate. The circumstances of the conviction must be considered. If the conviction does not involve moral turpitude, crime, violence, or association with anti-government movements, it should not be a disqualifier, which is not the case at hand. Even the recruitment rules do not disqualify candidates solely based on pending criminal cases. A conviction itself is not a disqualification unless it involves moral turpitude. Besides denying appointment in civil/public posts, based on pending criminal cases can lead to injustice, as the accused might be acquitted by the trial court.

8. In the present case, the Sindh Police initiated a recruitment process for the post of Police Constable in 2022. The petitioner, Atta Muhammad, was selected for the post in District Malir after clearing the written test, physical test, and interview, and was denied the position of Police Constable on the analogy that he was involved in a criminal case in the past, however at the same time, we are sanguine of the fact that in disciplinary force, like police, it is expected that the persons/candidates 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.

9. Coming to the case of the candidates having criminal records, in this regard our criminal justice is founded on the Code of Criminal Procedure, Pakistan Penal Code Qanoon-e Shahadat Order to lay norms for the admissibility of evidence. 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 to the guilt of a Government servant and on acquittal one is obliterated of all the allegations. 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.

10. Once the candidate is acquitted of the alleged charges before the initiation of the recruitment process which means there was no accusation against him when he applied for the subject post, which does not disqualify him from participating in the recruitment process; besides that stigma was no more in his character as the competent court of law cleared him from the charges and the state failed to file appeal against his acquittal from the criminal charges, in such a situation the candidate cannot be held disqualified for the civil/public posts. 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/her employment.

11. In the instant case, the guidelines as set forth would not apply, as the criminal Court has not convicted the petitioner, rather he has been acquitted of the criminal charges based on evidence and 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 in any punishment by the department and held him disqualified for the post because acquittal 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.

12. The question before us is whether the petitioner could be deprived of a chance to serve the police department solely on the grounds of past criminal records.

13. There is no denial from the fact that in Government service 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 a Government service. The candidates must have good character and provide two recent character certificates from unrelated individuals. What is discernible from the above is that the only impediment to being appointed to a Government service is the conviction on an offense involving moral turpitude but involvement, which does not culminate into a proof by conviction, cannot be a way out or guise to do away with the candidature of the petitioner.

14. The petitioner was not denied the appointment due to concealed information or character issues. The sole reason for denial was the pendency of one criminal case, in which the petitioner had already been acquitted. Mere pending cases may not be the sole reason for disqualification for the civil/public posts.

15. Coming to the case decided by this court on the subject issue and its applicability in the present case, this Court in the case of Abdul Ghani supra, after going through the judgments of the Supreme Court in the cases of National Bank and Faraz Naveed (Supra) held as under:-

*“15. In view of hereinabove facts and circumstances of the case and by following the dicta laid down by the Hon<sup>ble</sup> Supreme Court as above we are of the view that strict application of Section 15 of the Act without reading it with the proviso to Section 6 (3) *ibid*, is not appropriate to accommodate the Petitioners (except those who have been discharged by the Courts in “C” class) in any Employment with the Police Department as their antecedents and character does not appear to be satisfactory as per the criterion laid down by law as well as the judgments of Supreme Court; hence, their petitions are liable to be dismissed and it is so ordered. Insofar as the cases wherein the Police Report filed under Section 173 Cr.P.C. have been canceled 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.”*

16. Primarily, the police force is a disciplined force; it shoulders the great responsibility of maintaining law and order and public order in the society; that people repose great faith and confidence in it; that it must be worthy of that confidence; that in recent times, the image of the police

force is tarnished and instances of police personnel behaving in a wayward manner by misusing power are in Public domain and are a matter of concern. This factual position is also a cause of great concern these days in our Country as well. On numerous occasions, we come across the involvement of Police personnel in routine as well as heinous crimes, and even if they are apprehended, are let off by the Courts due to faulty and supportive investigation by their brethren by extending the benefit of the doubt. Taking guidance from these observations, it is observed that this must stop and Courts are also required to play their part and let this issue be decided by the Executive / Appointing Authority which in all fairness is in a much better position to ascertain facts and the relevant ground realities.

17. As a result of the foregoing discussion, we dispose of the instant petition along with the pending application(s), with directions to the competent authority / Inspector General of Police, Sindh to scrutinize the candidature of the petitioner afresh and if he is found unfit for police force, he could be adjusted on any ministerial post positively as he has been declared successful candidate and his candidature may be processed strictly under the Recruitment Rules within one month from the date of communication of this order and submit compliance report through MIT-II of this Court.

18. This petition is disposed of in the above terms.

JUDGE

JUDGE