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IN THE HIGH COURT OF SINDH CIRCUIT COURT, LARKANA.

Constitutional Petition No.-D-1431 of 2015.

Present.Mr. Justice Zafar Ahmed Rajput
Mr. Justice Adnan-ul-Karim Memon

Asadullah & (04) others. - - - -

Petitioners.

Versus.

The Deputy Inspector General of Police,
Training & (03) others.

- - - - Respondents.

Date of Hearing: : 14.06.2017

Date of Judgment : .08.2017

Mr. Ghayoor Abbas Shahani, Advocate for the petitioners.
Mr. Shafi Muhammad Chandio, Addl: A.G Sindh.**JUDGEMENT.**

ADNAN-UL-KARIM MEMON, J:- In the above captioned petition, petitioners are seeking declaration to the effect that they are eligible and fit candidates for appointment as Police Constable (BPS-05) in Sindh Police Department, in Training Branch, against son quota, in view of the Standing Order No. 279/2014, with further prayer to direct the respondents No.1 and 2 to issue appointment orders in their favour.

2. The gist of the case of petitioners is that the fathers of the petitioners were working in Police Department, Government of Sindh. The father of petitioner No.1, 2, 3 and 5 are still serving while father of petitioner No.4 stands retired from his service in the year 2014. The petitioners have asserted that the office of Inspector General of Police, Sindh issued Standing Order No.279/2014 dated 09.06.2014 for recruitment against Shaheed Quota and son quota for (the children of deceased, invalidated on medical grounds, retired and

in service police officers/men). It is further added by the petitioners that on 30.05.2014 office of the Senior Superintendent of Police/Principal Police Training College Saeedabad Karachi constituted a committee for holding physical (height & chest) and written test of the candidates of Training Institutions for the appointment against son quota, which was held on 02.06.2014 at 11-00 a.m. at Police Training Center Saeedabad, Karachi. It is added by them that the office of Addl: Inspector General of Police, Sindh Karachi vide order dated 02.11.2015 revised the constitution of the committee. It is further claimed by the petitioners that after constitution of committee, the respondent No.1 had called applications from suitable and deserving candidates; the petitioners had submitted their respective applications which were accordingly entertained and considered by the respondents and therefore they were called upon for written test held on 02.06.2014 at Police Training Centre Saeedabad, Karachi. Petitioners further claimed that they were declared successful candidates and such list was issued on the same day; the petitioners had also appeared in a physical test in which they were also declared successful. Petitioners produced merit list of (60) qualified candidates and their names appeared at S.No.4, 16, 26, 32 & 45, according to them, the petitioners were amongst the qualified candidates. Such list is available at page 47 of the memo of petition. Petitioners further added that out of above 60, 12 candidates were appointed on general quota in Sindh Police Department, therefore other merit list comprising 48 candidates was prepared by the respondent No.1 vide office letter dated 07.01.2015 and the same was sent to all the Principals, Police Training Institutions in Sindh and their names are mentioned in the list of 48 candidates at S.No.2, 10, 18, 23 & 34. It is further claimed by the petitioners that the Principal, Police Training School, Larkana vide

letter dated 26.12.2014 recommended 09 candidates from Police Training School Larkana to respondent No.1 and requested for their appointment in view of the standing order No.279/2014. It is also claimed by the petitioners that they were qualified and found fit and eligible candidates so withholding their appointment process by the respondent No.1 and 2 since more than a year is against the basic principle of law and equity. The petitioners being aggrieved by and dissatisfied with the in-action of the respondents have approached this Court under Article 199 of the Constitution.

3. Upon notice, the respondents No. 1, & 2 have filed their parawise comments.

4. Mr. Ghayoor Abbas Shahani, learned Counsel for the petitioners has argued that in compliance of Standing Order No.279/2014 issued by the office of respondent No.2, the petitioners appeared in written test as well as in physical test conducted by the committee, constituted by the respondents, whereby the petitioners were declared successful cum eligible/fit candidates for appointment as Police Constable (BPS-05) in Sindh Police Department, Training Branch. He further argued that merit list of the candidates was prepared and submitted together with recommendation to the respondent No.1 and 2 but they have withheld the appointment orders of the petitioners without any rhyme and reason. He next asserted that the respondents are intending to make fresh appointments of their favorites in the place of petitioners by ignoring the merits of the petitioners, who have qualified for the post applied for. He next contended that the petitioners have vested right to claim appointment as Police constable in Sindh Police, Training Department as they have met the requisite criteria and qualified the test and fulfilled other formalities as required under the law. Per

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Learned Counsel, the appointment orders cannot be withheld or kept in abeyance by the respondents. He next argued that the respondents have no legitimate right either to cancel the process of appointment of police constables in Training Department on the basis of Standing Order or withhold the same. He next added that the respondents are not acting in accordance with law and have violated the fundamental rights of the petitioners by not issuing the appointment orders to the petitioners as Police Constable in Training Branch. He lastly contended that the Standing Order No.279/2014 was taken into consideration by this Court in Constitutional Petition NO.D-170/2015, whereby this court allowed the Petition vide order dated 26.05.2016 and directed the respondents to appoint them in Police Department on son quota as recommended by the committee. It is further added by him that the order dated 26.05.2016 passed by this court was impugned before the Honourable Apex Court in Civil Petition No.-652-K of 2016 and the Honourable Supreme Court vide order dated 17.08.2017 dismissed the Civil Petition of the Government of Sindh, whereby the decision of this Court was maintained. In support of his contentions learned counsel has relied upon the case of Gul Hassan Jatoi and others Vs. Faqeer Muhammad Jatoi & others (2016 SCMR 1254) & argued that the Honourable Supreme Court has not declared as null and void the subject Standing Order.

5. Mr. Shafi Muhammad Chandio, Learned Addl: A.G Sindh has contended that the case of petitioners fall under serving/retired employees quota relating to the Standing Order NO.279/2014 which has also been suspended along with all other standing orders by the directives of Honourable Apex Court in the case of Gul Hassan Jatoi and others Vs. Faqeer Muhammad Jatoi & others (2016 SCMR 1254). He next contended that only those claims of heirs for recruitment

against son quota are entertained, whose father/mother are died while in service in the light of Rule-11-A of Sindh Civil Servants (appointment, promotion, transfer rule-1974). He next contended that petitioners are not entitled to be appointment as Police Constable under Standing Order No.279/2014 as the same has not been approved by the Provincial Government and the Honourable Supreme Court has nullified all the Standing Orders issued by the Inspector General of Police, which are not approved by the Provincial Government. He lastly prayed for dismissal of the instant petition.

6. We have heard the learned counsel for the parties and perused the material available on record and case law cited at the bar.

7. The primordial question in the subject petition is that whether the petitioners can claim appointment as police Constable under Standing Order No.279/2014 for the recruitment against Shaheed Quota and Son quota, which has not been approved by the Provincial Government under section 12 of the Police Act-1861.

8. Record reveals that office of Inspector General of Police Sind Karachi vide order dated 09.06.2014 issued Standing Order No.279/2014 notifying the recruitment in Sindh Police against Shaheed Quota, Son Quota (children of deceased, invalidated on medical grounds, retired and in-service police officers/men). It has been agitated by the learned Additional Advocate General Sindh, that the Standing Orders issued by the Inspector General of Police was without approval of the provincial Government, and the same have no any legal status. To rebut the said contention of Learned Addl: A.G Sindh, no argument has been advanced by the learned counsel for the petitioners.

09. That on the examination of Section 12 of the Police Act 1861, the relevant portion is re-produced as follows:-

"12. Power of Inspector-General to make rules: The Inspector-General of Police may, from time to time, subject to the approval of the [Provincial Government], frame such orders and rules as he shall deem expedient relative to the organization, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be formed by them; their inspection, the description of arms, accoutrements and other necessities to be furnished to them; the collecting and communicating by them of intelligence and information, and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties."

10. Moreover section 12 of the Police Act, 1861 leaves no doubt or ambiguity as to the fact that the police force is commanded by Inspector General of Police, who has powers to frame orders and rules but subject to the approval of the Provincial Government. He can frame orders or rules with regard to the recruitment, organization, classification and distribution of police force. In other words the aforesaid provision enables the Inspector General of Police to cater to the situation, where it is expedient for him to issue such orders and make such rules with the approval of the government, as are required to meet the contingencies. We are fortified by the Judgment of Honourable Supreme Court rendered in the case of Gul Hassan Jatoi & others Vs. Faqeer Muhammad Jatoi & others (2016 SCMR 1254) in which the Honourable Supreme Court has held that the Standing Orders issued by Inspector General of Police has to be approved by the Provincial Government. Admittedly, the subject Standing Order has not been approved by the Provincial Government, therefore no sanctity can be attached with the Standing Order No.279/2014 to claim benefit out of it.

11. Reverting to the main point raised by the learned Counsel for the petitioners that the Standing Order No.279/2014 is

still in force and has yet not been cancelled yet and this Court vide order dated 26.05.2016 in C.P.No.170/2015 relied upon the Standing order No.279/2014 directed the respondents to appoint the petitioners in Police Department on son quota as recommended by the committee is concerned, recently the Honourable Supreme Court in the case of Gul Hassan Jatui & others (*supra*) and in the case of Mohammad Nadeem Arif & others vs. IGP Punjab, Lahore & others (2011 SCMR 408) has declared the Standing Orders issued by the IGP without approval of the Government to be of no legal sanctity, thus the order passed by this Court cannot be cited as precedent as the Honourable Supreme Court subsequently declared all Standing Orders without approval of the Government as illegal, therefore the petitioners cannot take resort of the Standing Order No.279/2014 to claim appointment as Police Constable as this is the prerogative of the Provincial Government to make appointment/recruitment in police department through publication in the newspaper and in transparent manner.

12. Admittedly, the petitioners have not been declared successful candidates on merit, therefore, they cannot claim issuance of appointment letters as a matter of right. The recommendations of the petitioners, if any, made by the respondents being in violation of law cannot be given sanctity. Even otherwise, the same powers are subject to the approval of the Government. Moreover Rule-11-A of Sindh Civil Servant (Appointment, Promotion, Transfer Rules-1974) provides complete mechanism for appointment against son quota. The relevant portion of Rule 11-A of Sindh Civil Servants (Appointment, Promotion, Transfer) Rules 1974 is reproduced herewith:-

“11-A. Where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his children shall be provided job on any of the pay scales

Nos.1 to 10 in the Department in which the deceased civil servant was working without observance of the prescribed formalities if such child is otherwise eligible for the post."

13. In view of the above, it is crystal clear that the respondents cannot circumvent the law to make recruitment against the son quota by issuing Standing Order for the recruitment in Sindh Police against Shaheed Quota, Son Quota without approval of the Provincial Government.

14. That the case law cited by the Learned Counsel for the petitioners is on different footing and distinguishable from the facts and circumstances of the present case.

15. In the light of above discussion, the instant constitutional petition along with pending application(s) is dismissed.