

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Before:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 2414 of 2016

Naimatullah

Petitioner

VERSUS

Province of Sindh & others

Respondents

C.P. No. D- 2415 of 2016

Zafar Ali

Petitioner

VERSUS

Province of Sindh & others

Respondents

Dates of hearing & decision: 09.09.2020

Mr. Mumtaz Ahmed Lashari, advocate for Petitioner(s)

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh
alongwith SIP Shakeel Khan for Principal Police Recruitment Training
Centre Hyderabad.

ORDER

ADNAN-UL-KARIM MEMON, J. - The above referred Constitutional Petitions are being disposed of vide this Single order, as common questions of law and facts are involved therein.

2. Basically the Petitioners have approached this Court, seeking directions to the Respondent-Police department to allow them joining and posting orders for the post of Police Constables (BPS-05) in Police Recruit Training Centre (RTC) Hyderabad. Per Petitioners, inspite of the fact that they had qualified the physical test, written test, and interview and also completed the requisite training at RTC Hyderabad which was continued for nine months, they were not given posting orders and joining their duties, hence due to lethargic attitude on the part of respondent-police department, they have suffered a lot and have filed the instant petitions.

3. Mr. Mumtaz Ahmed Lashari learned counsel for the Petitioners has argued that Respondent- Police Department has issued appointment letters

to the petitioners for the post of Police Constable (BPS-5) and in spite of the fact that they had qualified the physical, written test as well as interview and completed the training for the aforesaid posts they have been denied joining and posting orders as well as salary. At this stage, we queried from learned counsel for the Petitioners as to how they are claiming posting orders, when their appointments were found fake on the premise that their appointing authority was not competent to issue appointment orders being in the Rank of Deputy Superintendent of Police (DSP). He in reply to the said query has submitted that the Respondent-Police Department did not issue any show cause notice to the petitioners in terms of section 11(1) of the Civil Servants Act, 1973; that no reasons for impugned action has been assigned in view of section 24-A of the General Clauses Act, 1897; that where the Statute confers powers to make any order or give direction to any authority, office or person, the same should be exercised reasonably, fairly, justly and for advancement of the purpose of enactment; that no illegality has been pointed out in the appointment of petitioners; that after issuance of appointment letters to the petitioners and completing requisite training, valuable right had accrued in favour of petitioners but the respondents have condemned them unheard; He further added that the attitude of police department by allowing other candidates to join the police department and depriving the petitioners from posting and salary is discriminatory, which is prohibited under Article 25 of the Constitution; that while stopping the salary of petitioners due process of law has not been followed; that the petitioners are being deprived of their lawful remuneration / salary despite being eligible/ selected and qualified candidate, appointed after due process of law; that the petitioners were appointed on vacant position of Police Constable (BPS-05); that the inquiry regarding fake/ illegal appointments was initiated against the concerned officer, who has been exonerated from the charges as such petitioners cannot be saddled with any penalty; that there is no justification to stop the salary of petitioners and withhold the posting orders; that there is no relieving order of the petitioners from service and there is no termination letter as well. On the maintainability learned counsel argued that the controversy does not relate to terms and conditions of the service of the petitioners as envisaged under Chapter-II of the Civil Servant Act, 1973, the remedy of appeal under section 4 of the Sindh Service Tribunals Act, 1973 before the Sindh Service Tribunal would not be available to the petitioners, therefore, the bar of jurisdiction under Article 212 of the Constitution would not restrain this Court from exercising jurisdiction under Article 199 of the Constitution. He lastly prayed for allowing the petitions with direction to the respondents to continue them in service as Police Constables and pay them their due salaries in accordance with law. In support of his contention, he relied upon the case law reported Muhammad Jan and 10 others v.

Secretary Health Department Government of Baluchistan and 2 others (2013 PLC (C.S.) 370, Rehan Saeed Khan and others v. Federation of Pakistan and others (1999 SCMR 2855), Inayatullah and others v. Director-General and others (2006 SCMR 535), Saleem Nisar v. Commissioner of income-tax / Wealth Tax, Bahawalpur (1998 PLC (C.S.) 423.

4. Mr. Allah Bachayo Soomro learned A.A.G. representing the Respondents has raised the issue of maintainability of the captioned Petitions and argued that the basic appointments of the petitioners is / was fake, therefore, the question of joining / posting and salary does not arise ; that the impugned action has been taken against the petitioners and other ghost employees in Police Department, in pursuance of orders passed by Hon'ble Supreme Court of Pakistan in (1) Cr. Petition No.89-K of 2014 (SHO PS Sachal Malir V/S the State and another), and (2) Civil Petitions No.820-K of 2016 and other connected petitions (Inspector General of Police, Sindh etc. V/S Nasrullah Lolai and others); this Court has no jurisdiction to interfere in the fake appointment of petitioners; that there is no discrimination meted out with the Petitioners; that there is reasonable classification protected under the law and the Constitution, which is out of the purview of Article 199 of the Constitution; that the Petitioners did not qualify for the post of Police Constables as per terms and conditions set forth in the Recruitment Rules/ Standing Order; that fake appointment orders were issued to the petitioners by one Nisar Ahmed Brohi (DSP) who was not competent to issue appointment orders under the law. He lastly prayed for dismissal of instant petitions. In support of his contentions he relied upon the inquiry report conducted against Nisar Ahmed Brohi (DSP) who was later-on found guilty.

5. We have heard learned counsel for respective parties and have minutely perused the record and the case law cited at the bar.

6. The issue of maintainability of the captioned Constitutional petitions has been raised in the light of orders dated 27.02.2015 & 07.8.2019 passed by Hon'ble Supreme Court of Pakistan in the cases of SHO PS Sachal Malir (supra), whereby direction was issued to take disciplinary proceedings with regard to patchy character of police officials and action against them having patchy record, whereby departmental punishments / penalties were restored.

7. During the course of arguments, we asked learned counsel for the petitioners to show us the advertisement, call letter, interview letter, offer letter, and other requisite documents to show that the petitioners' appointments were/are genuine. He reiterated his arguments as discussed supra and further argued that this is a case of hardship therefore, this Petition can be heard and decided on merits. If this is the position of the

case, in our view, once the Competent Authority probed into the fake appointments and in terms of the findings action has been taken against the beneficiaries including the petitioners and the appointing authority, this factual aspect cannot be looked into in constitutional jurisdiction under Article 199 of the Constitution. An excerpt of the findings is as under:

" In continuation to this office letter bearing No. 8557-58/DIGP/TRG/ Estt. dated 05.05.2016 & 9280-81/DIGP/TRG/Estt. dated 18.05.2016, on the subject cited, it is stated that the enquiry officer Agha Ejaz, Principal SAAB RTC Hyderabad has submitted the following findings:-

- i. Mr. Nisar Ahmed Brohi, DSP the then Principal SAAB, RTC Hyderabad has collected rupees five to seven lacks as illegal gratification for appointment of 134 Police Constables.
- ii. During the year 2014 & 2015, he has issued medical letters & character verification letters to such candidates & subsequently deputed them to undergo basic Training in 16th Batch at RTC Hyderabad.
- iii. During the month of April & May 2015, he has collected the mess cutting from such illegal appointees as well as issued kit articles to them.
- iv. In the month of December-2015, he collected back the appointment orders & other relevant documents from such illegal appointees & takes these documents along with him.
- v. He has also deleted computer data pertaining to the whole illegal appointments.

In view of the recommendations of the enquiry officer, disciplinary action may kindly be initiated against Mr. Nisar Ahmed Brohi, DSP the then Principal SAAB, RTC Hyderabad RSO-2000. "

8. Reverting to the claim of petitioners that they were legally appointed and the Hon'ble Supreme Court has not given any observation against them, therefore the Respondents cannot stop their salaries as they are still on their payroll and holding the posts; suffice to say that if the petitioners claim that they are Civil Servant therefore, the forum chosen by them by invoking the Constitutional Jurisdiction of this Court under Article 199 of the Constitution is not proper under the law in view of the bar contained under Article 212 of the Constitution. On the aforesaid proposition, reliance is placed in the case of Azhar Ali Khan Baluch vs. Province of Sindh and others (2015 SCMR 456).

9. To address the issue of salary, since the expression 'terms and conditions' includes salary and Sindh Services Tribunal has jurisdiction to decide such issue and the validity of impugned action, this petition is not maintainable. We are fortified by the decision rendered by Hon'ble Supreme Court of Pakistan in the case of Punjab Textbook Board Lahore & others Vs. 9 Muhammad Akhtar Sherani & others, PLD 2001 SC 1032. The Hon'ble Supreme Court has held at paragraph No.8, as under:-

" Even the case reported as Administrator, District Council, Larkana and another v. Ghulam Khan and others (2001 SCMR 1320) is also not attracted herein that in he said precedent the question of withholding of salaries of the employees was involved as their appointments were allegedly made in violation of the rule. We respectfully disagree with the dictum that the objection raised on behalf of the petitioners therein to the effect that the High Court has no jurisdiction to entertain the matter in relation to salary of the employees as it has a direct nexus with the terms and conditions of service of the employees in view of the bar imposed 4 under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 was a technical objection. In our considered view the objection to the jurisdiction of the High Court to entertain a writ petition raised on behalf of the petitioners therein, was not technical in nature but going to the very root of the case. This Court has repeatedly held that the Service Tribunal alone is the appropriate forum having jurisdiction to deal with matters relating to the terms and conditions of service of civil servants in view of the bar contained in Article 212 of the Constitution. To this extent we respectfully overrule the above dictum." (Emphasis Added).

10. Besides above, we have noticed that there are allegations and counter allegations leveled by the parties in the present proceedings, in such state of affairs, in our view while exercising powers under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the powers of High Courts are not as of appellate Court. High Court can only exercise Constitutional jurisdiction in matters, where no factual controversy is involved and the impugned action / order is without jurisdiction. Exercise of jurisdiction by the High Court under this Article is very limited in its scope and it has to be used very carefully. To invoke the Constitutional jurisdiction of this Court, the petitioners have to show that they have left with no other adequate remedy under the ordinary law of land and he has to satisfy the Court that he is really an aggrieved person and certain orders or directions of a Court, Authority or Tribunal need rectification. In present case, the petitioners have failed to avail all the remedies available to them under the law i.e. departmental appeals, appeal before learned Sindh Service Tribunal and even before this Court and could not make out a case where this Court in Constitutional jurisdiction can interfere.

11. In the light of foregoing facts and circumstances of the case, we find no justification to substitute our findings in place of findings of probe committee. The committee conducted the scrutiny of fake appointments in Sindh Police (RTC) Hyderabad as per rules; therefore at this juncture, we do not see any discriminatory treatment meted out with the Petitioners.

12. In absence of aforesaid material, the Petitioners have thus failed to make out a case for joining / postings for the post of Police Constables in Sindh Police as well as salary issue. The entire case of Petitioners is based upon factual assertions, which cannot be given sanctity.

13. In view of the foregoing discussion, the Petitioners have failed to make out their cases on the aforesaid grounds, thus, the captioned petitions are devoid of any merit and are dismissed along with listed applications.

JUDGE

JUDGE