

C.P.No.D:- 1254 of 2012.

Petitioners: Muhammad Aslam and another through Mr.Syed Jaffar Ali Shah advocate.

Respondents: Government of Sindh and others through Mr.Noor Hassan Malik, State Counsel.

Date of Hearing: 14th May, 2013.

JUDGMENT.

SALAHUDDIN PANHWAR, J:- Through instant petition, the petitioners have prayed as under:-

a. That it may be declared that in the light of standing order dated 26/7/2011 passed by IG Sindh Police Karachi, the petitioner No.02 is entitled to the relief extending to the children of retired police employees as such he is also entitled to be appointed as constables in the Police.

b. That the act of respondents not appointing the petitioner No.02 as Constables be declared as illegal and unlawful and against the standing order dated 26/7/2011 issued by IG Police Sindh Karachi.

2. Learned counsel for the petitioners, inter alia, contends that Petitioner No.1 is a retired SIP from RTC Khairpur and Petitioner No.2 is a real son of Petitioner No.1, who had applied for the post of constable on the basis of son quota; Petitioner No.1 was appointed in police department in the year 1971 after serving 38 years on various positions he was retired with effect from 11.05.2011. It is further contended that as per Standing Order No.260 of 2011 issued by IGP Sindh, laying down policy for recruitment in the rank of Constable/Junior Clerk/Naib Qasid against the quota for children of serving and retired police employees. Petitioner No.1 during service applied for appointment of his son as Police Constable as his case was falling within the specified category of Standing Order. Pursuant to that Standing Order, Petitioner No.2 applied for the post of Police Constable in the year 2007. He qualified written test but was not appointed by respondents. Subsequently, Petitioner No.2 again applied for the said post in the year 2008 and qualified the written test but was not again appointed on the ground that he could not qualify the viva-voce examination. Petitioners claimed that while making appointment, the respondents have discriminated as they have recommended those candidates, who were in lower position of Petitioner No.2 since 2007 Petitioner No.2 is approaching from pillar to post but none has paid any heed.

3. Per record, the respondent No.3 DIGP, Sukkur Range in his comments has submitted that the Petitioner No.2 including other

candidates, who qualified written test, were called in the Office for the purpose of viva-voce, but petitioners failed to qualify/succeed in viva-voce before the Board; hence his name does not exist in the final merit list of 59 candidates recommended to IGP Sindh. It is further revealed that Petitioner No.1 also served in Police Recruit Training Centre, Khairpur, therefore, Principal Police Recruit Training Centre, Khairpur recommended for appointment of Petitioner No.2. For the sake of convenience, such recommendation is reproduced as under:-

“I, therefore, request that above named Irfan Ali S/o Retired SIP Muhammad Aslam Maitlo may kindly be approved to be appointed as Constable in Training Branch Range Sindh or RTC, Khairpur, for which he is suitable candidate, for the post of Constable.(Photocopy of Service Book of Muhammad Aslam, Retired SIP, father of applicant and the photocopies of Qualification Certificates, Domicile, CNIC etc. of applicant Irfan Ali are enclosed herewith for your kind perusal please)”.

4. Learned State Counsel admitted that according to Standing Order issued by IGP Sindh, the case of Petitioner No.2, is qualified in same category but it was mandatory for the Petitioner No.2 to qualify written as well as viva-voce examination but he has failed in viva-voce examination, thus he is not entitled for the relief claimed for.

5. Heard the arguments and perused the record.

6. After consideration of pleas taken by respective parties and meticulous examination of available record, it is evident that the issue revolves round the standing order, issued for recruitment of children of serving and retired police employees, therefore, it would be helpful to refer such bone of contention first which is reproduced hereunder:-

“STANDING ORDER NO. 260 /2011.

RECRUITMENT IN THE RANK OF
CONSTABLE/JUNIOR CLERK/NAIB
QASID AGAINST TH EQUOTA FOR
CHILDREN OF SERVING AND RETIRED
POLICE EMPLOYEES.

In exercise of the powers conferred under Police Rule 14.55 the IGP/Sindh pleased to notify the following standing order:-

This order may be called “RECRUITMENT
AGIANST THE QUOTA FOR CHILDREN
OF SERVING AND RETIRED POLCIE
EMPLOYEES.”

This Standing order shall come into force with immediate effect.

OBJECTIVE.

- i. To extend relief to in service Police employees who have qualified 20 years of service.
- ii. To extend relief to Retired Police Personnel who have served for at least 20(twenty) years in Police.
- iii. Seats will be allocated to the Quota as per policy of the Government from the vacancies available.

DEFINITION.

- (a) Legal Heir means Son/Daughter.
- (b) Board means body of members only constituted by the I.G.P to conduct test/interview.

ELIGIBILITY.

- (i) Son/Daughter of Serving and Retired Police Employees, who otherwise meet the criteria of Constable, Junior Clerk & Naib Qasid shall be considered for employment through open merit.
- (ii) Only one claim shall be given to a Police Employee.

QUALIFICATION.

Recruitment will be same as per regular appointments of Male/Female candidates:-

RECRUITMENT COMMITTEES.

The Recruitment Committee shall comprise of:-

- a) Chairman Addl.IGP/DIG of Range.
- b) Member/Secretary DIGP/ADIGP/Range.
- c) Member District SSP/SP of the district to which the employee belongs.

SCRUTINY OF APPLICATION.

Scrutiny of application shall be done by the Recruitment Committees on receipt of the applications through the concerned District SSP/SP.

PROCEEDINGS OF THE RECRUITMENT COMMITTEE.

- (i) The proceedings of Recruitment Committee shall be sent to CPO for consideration and approval by the Inspector General of Police.
- (ii) The Inspector General of Police Sindh may grant condonation in qualification and physical standards to son/daughter who has been recommended for appointment by the recruitment committee”.

7. There can be no denial to the fact that even before issuance of the *Standing Order* in question there was no ban for children of the retired and serving employees to apply and to be enlisted in the department if they successfully qualify required test (s) including written and viva-voce examination, therefore, if it is presumed that even after issuance of the *Standing Order* the criteria for recruitment for children of retired and serving employees remain same then there appears no purpose and objective of issuance of the *Standing Order*. The *Standing Order* itself makes the objective and purpose of its issuance clear by saying that:-

OBJECTIVE.

- iv. To extend relief to in service Police employees who have qualified 20 years of service.
- v. To extend relief to Retired Police Personnel who have served for at least 20(twenty) years in Police.

- vi. Seats will be allocated to the Quota as per policy of the Government from the vacancies available.

8. The objective has made it clear that it is meant to extend relief to those serving employees, who have served 20 years service and those retired employees who served the department at least 20 years. The use of the phrase "*to extend relief*" in the objective of the *Standing Order* should be given its due intended meaning because if the children of a retired and serving employee (having served the department at least 20 years) yet have to undergo whole the process, as provided for other candidates applying on merits then intentionally used phrase "*to extend relief*" shall lose its value and significance. Further, we may add here that the condition of at least 20 years is also not without substance but it has intentionally been used so as to confine extension of such relief to those employees only who have served at least 20 years and not to every single employee of the Police which further insists that the *Standing Order* is a deliberate and purposeful move hence the respondents, at all material times, are / were required to give weight to the objective and purpose of the *Standing Order*.

9. Having said so, now we would revert to the merits of the case in hand. The following facts are not disputed at all:-

- i) *the petitioner No.1 has served more than 20 years in the police department;*
- ii) *the petitioner No.2 is the real son of the petitioner No.2*

Both the above undisputed facts leave nothing ambiguous that the case of the petitioners fall within the meaning and objective of the *Standing Order* therefore, the petitioner No.2 is legally entitled for extension of relief, so provided under the *Standing Order* in question.

10. Now we further would like to examine the condition of eligibility, as per the *Standing Order*, which is that "*who otherwise meet the criteria of Constable, Junior Clerk & Naib Qasid*". This puts only a condition that children of the employees shall be required to show that they fall within the "*criteria*" so required for such post. This no-where requires that such qualified candidate (per *Standing Order*) should also undergo all tests, as are to by a regular candidate. The word "*criterion*" is defined in the Oxford dictionary as "*a principle or standard by which something may be judged or decided*". This also makes it clear that it is the qualification / requirement for the job which are described at the time of inviting application (s) for such jobs. Such eligibility of the petitioner No.2 is no where disputed because he was found physically fit so was allowed to appear in written test and even he qualified such written test (s) twice which also proves that the petitioner No.2 was, at such

times, falling within the "*criterion*" so required for the post of constable.

11. Keeping in view the above given facts and circumstances of the case, the Petitioner No.2 has qualified the written examination and is not disqualified on any other ground, therefore he has succeeded in making out his case. Consequently, instant petition is allowed as prayed. The respondents are hereby directed to appoint the Petitioner No.2 as constable within one month under compliance report to this Court.

12. While parting we would like to endorse here that since the Standing Order itself speaks that "*Seats will be allocated to the Quota as per policy of the Government from the vacancies available*" but it no where specifies manner of selecting the children of employees under such reserved quota if the number of such candidates exceeds from number of reserved seats under this Standing Order but the Standing Order provides that one should only meet criteria to claim such relief, therefore, we feel that non-explaining and describing of such manner of extension of such relief may be taken as a sword of *discrimination* as was claimed in the instant case. We may say here that if the reserved posts under such head are 20 and candidates, falling within meaning of this Standing Order, are 30 in number who, per Standing Order, stand in same category for entitlement to such relief. In such eventuality there must be a policy to do justice with those standing under one

umbrella in such a manner and fashion that no one come out with a plea of discrimination. Needless to add here that it is not the Standing order which matters but it is the procedure through which a standing order is intended to be dressed up else the objective would lose its significance. Accordingly, the authorities are directed to chalk out a procedure through which the intended relief be given to such employees so that object of the Standing Order could meet its ends.

Above are the reasons of our order dated 14th May, 2013 whereby we had allowed this petition.

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