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Judgment Sheet

IN THE LAHORE HIGH COURT

BAHAWALPUR BENCH, BAHAWALPUR

JUDICIAL DEPARTMENT

....

Intra Court Appeal No.37 of 2022

Government of the Punjab, etc.

Versus

Muhammad Ahmad.

JUDGMENT

Date of hearing: **16.05.2024.**

Appellants by: M/s Zafar Iqbal Awan, Additional Advocate General, Asghar Laghari, Assistant Advocate General and Rai Mazhar Hussain Kharal, Assistant Advocate General.

Muhammad Khan, S.P (Legal, Tauqeer Anwar, DSP (Legal), Abdul Rauf, DSP (Legal) and Ashfaq Haider, Senior Clerk, Office of RPO Bahawalpur.

Respondent by: M/s Muhammad Tahir Saeed Ramay, Sardar Abdul Basit Baloch and Nosheen Hashmi, Advocates.

ASIM HAFEEZ, J. This Intra Court Appeal is directed against order of 06.12.2021, whereby learned Single Judge-in-Chambers had allowed the constitutional petition bearing ***W.P.No.1297/2021*** and directed the Police department to consider respondent for appointment as Sub-Inspector.

Briefly the background facts, essential for adjudication, are that respondent applied and competed for initial appointment, against the post of Sub-Inspector, advertised by the Punjab Public Service Commission, Lahore ('the **Commission**') vide public advertisement

No.21/2019 dated 07.07.2019. Respondent was recommended for appointment by the Commission. Upon seeking approval, respondent was got medically tested and found suffering from partial color blindness, who was declared unfit and held disqualified for the post in question. And whereupon litigation commenced.

2. Instant appeal is placed before larger Bench, in wake of the observations recorded by learned Division Bench while passing order of 21.02.2024, which, for ease of reference, is reproduced hereunder as:-

"According to learned Law Officer, criteria laid down in notification No.SP(H&D)1-7/65 dated 14.09.1965 (1965 notification) was applicable to the case of respondent. Reliance in this regard has been placed on case "Province of the Punjab etc. v. Attique Zaidi etc" decided by this Court in ICA No. 162 of 2015. We have gone through the referred judgment so relied by learned Law Officer and find that while deciding above referred case, provisions of Police Order, 2002 and Rules framed under Article 112 of the Police Order, 2002 besides notification No.30/AD/E-II/VI dated 02.01.2014 (2014 notification) were not brought into the notice of learned Division Bench of this Court. In our humble view, respondent's case qua his fitness for his fresh appointment as Sub Inspector is to be dealt with as per the provisions of Police Order, 2002 and Rules framed under Article 112 of the Police Order, 2002 besides 2014 notification instead of 1965 notification. In this backdrop, it would be appropriate that Larger Bench may be constituted for a decision through an authoritative judgment so as to obviate the possibility of any cleavage in the judgments on the moot point".

[Emphasis Supplied]

3. Broadly, questions tossed for adjudication are straightforward, whereby, in essence determination is sought regarding the scope and construction of the Rules, notified through Notification No.30/AD/E-II/VI dated 02-Jan 2014, and called as *Sub-Inspectors and Inspectors (Appointment and Conditions of Service) Rules, 2013 (Rules 2013)*. And adjudication is sought regarding effect of non-consideration of

Rules 2013, framed in exercise of powers under Article 112 of the Police Order 2002 and implications qua the instructions issued through document No.SO(H&D) 1-7/65 dated 14th September 1965 (**Notification of 1965**), while rendering judgment in the case of "*Province of the Punjab etc. v. Attique Zaidi etc.*" in **ICA No.162 of 2015** – Judgment in the case of "*Attique Zaidi*" was challenged but leave to appeal was declined by Hon'ble Supreme Court of Pakistan. Additionally, an objection of limitation qua instant appeal is also raised.

4. After hearing preliminary submissions, learned Law Officers ('law officers') are asked to dilate upon the effect and consequence of not mentioning condition of color blindness as alleged disability in the advertisement, where other qualifications were mentioned including the required vision standards; and why color blindness be treated as a ground for disqualification when such requirement did not find mention in the schedule to the Rules 2013, providing minimum eligibility qualifications; and if color blindness is not a minimum qualification requirement was it fair to consider such deficiency as ground for disqualification.

5. Law officers stated that minimum qualifications prescribed in schedule to the Rules 2013 were not the only conditions prescribed for assessing the eligibility and fitness of the recruit, and such minimum qualifications do not place any embargo upon considering requisite requirements in terms of Rule 12.16 of Chapter 12 of the Police Rules 1934. Add that qualifications prescribed in the schedule to the Rules 2013 indicate bare minimum requirements, which must exist at the

time of submitting application, and if any candidate does not fulfil minimum qualifications, same should not apply in the first place. Explain that medical certificates, for purposes of present issue, were procured at two different stages, firstly at the time of submission of application and other after recommendation by the Commission. Further explain that initial medical certificate, for the consumption of the Commission, was required for ensuring that *prima facie* the minimum physical qualifications are met, which certificate(s) contained limited medical information about the candidate. And post-recommendation medical certificate is essentially required for the purposes of confirming appointment / enrolment, which medical certificate is comprehensive and contained conclusive declaration of medical fitness. It is emphasized that minimum qualifications in the Rules 2013 are neither exhaustive nor same be construed as all-inclusive qualifications. Law officers read Rules 13 and 14 of the Rules 2013 to emphasize that no absolute exclusion of the conditions / requirements under Rule 12.16 of Chapter 12 of Police Rules 1934 or requisite vision standards, provided in the Notification of 1965, was intended and instead limited overriding effect was extended, barely to the extent of any inconsistency found in Rule 12.16 *ibid* or prescribed vision standards. Submit that no absolute exclusion can otherwise be implied vis-à-vis other requisite eligibility and fitness requirements. Further submit that irrespective of the recommendation of Public Service Commission no candidate could be enrolled or deemed appointed unless same is declared medically fit in terms of the certificate issued under Rule 12.16 of Police Rules 1934.

On query, law officers responded that nature of the duties to be performed in any Functional Unit of the Police Department were not specified in the advertisement therefore claiming fitness for assignment of duty in any particular Functional Unit in the department - where deficiency of color blindness does not otherwise hamper performance of duties – is misconceived and unwarranted, in the context of the advertisement under reference. Add that department may seek recruitment for any particular Functional Unit and may specifically exclude deficiency of color blindness, in the context of nature of the duties to be performed, but then schedule to the Rules 2013 requires tweaking. Law officers dwelled upon the distinctive concepts of eligibility and fitness, and cited following decisions reported as Government of Punjab through Secretary (S&GAD), Lahore and another V. Zafar Maqbool Khan and others (2012 SCMR 686), Muhammad Anis and others V. Abdul Haseeb and others (PLD 1994 Supreme Court 539). Add that applicability and relevancy of Police Rules 1934, notwithstanding promulgation of Police Order 2002, are acknowledged in the case of Syed Hammad Nabi and others V. Inspector General of Police Punjab, Lahore and others (2023 SCMR 584).

6. Conversely, learned counsel appearing for respondent objected to the maintainability of instant Appeal on the question of limitation – emphasizing that authorization for preferring appeal was procured after lapse of time provided for removal of office objections. On merits, submits that Rules 13 and 14 of the Rules 2013, read conjointly, comprehensively provided qualifications to recruit Sub-Inspectors and no qualification, other than the qualifications

prescribed in the Rules 2013, could be used as pretext to disqualify the respondent. Adds that borrowing of any ground for disqualification, by resorting to Rule 12.16 of Police Rules 1934 or vision standards in the Notification of 1965, is impermissible under the Rules 2013. Adds that qualifications provided in the advertisement, relating to vision standards, were mirror image of the qualifications mentioned in the schedule to the Rules 2013, which is not a coincidence but manifestation of affirmation of completeness of the qualifications in the schedule, which conspicuously does not prescribe color blindness as a disability or purported ground for disqualification. It is emphasized that color blindness is *per se* no disqualification. Reference is made to the regulations by the Federal Public Service Commission, where color blindness was not prescribed as disqualification for recruitment in the police department – and such deficiency was only a disqualification for seeking appointment against certain posts in the department of Railways. Explained that in developed and even in developing countries color blindness is not at all a disability or a ground to deny appointment, even in the police department. Learned counsel relies upon the case of *Union of India V. Satya Prakash Vasisht* [1994 SCC (L&S) 792, 2], and argues that candidate was appointed as Police Inspector (Executive) despite suffering from color blindness. On point of limitation, learned counsel read the opinion of the Solicitor's department to demonstrate that procuring of permission was after lapse of time provided for removal of office objections, whereby seven days were provided, and appeal was re-filed after expiry of original period of limitation.

7. Heard. Record perused.

8. Question, in particular that whether defective vision, on account of color blindness, constitutes a prohibition for the appointment in the police department, be it the issue of appointment of constable(s) or the Inspectors, repeatedly came up for adjudication before various learned Single Benches of this Court and was conclusively answered, against the candidates, by virtue of decision dated 14.02.2019 passed by learned Division Bench of this Court while deciding ICA No.162 of 2015 titled "*Province of the Punjab, etc. V. Attique Zaidi, etc.*" And said decision was unsuccessfully challenged before Hon'ble Supreme Court of Pakistan. Apparently, settled question of law, having factual trappings, is re-agitated on the premise that learned Division Bench had not appreciated conspicuous and meaningful change in the statutory framework brought by Police Order 2002 and largely the effect of the Rules 2013, framed in exercise of powers under Article 112 of Police Order 2002. Fundamentally, determination-cum-decision is sought qua the construction of Rules 13 and 14 of the Rules 2013, applicability and effect thereof, especially in the context of requirements / vision standards prescribed under the Notification of 1965. It is expedient to reproduce Rules 13 and 14 of the Rules 2013, which read as,

"(13) Method of recruitment, appointment and eligibility.-
The method of recruitment, minimum qualifications, age limit and other incidental matters for the posts of Sub-Inspectors and Inspectors in the functional unit shall be such as given in the Schedule appended to these rules.

(14) Overriding effect.- *These rules shall have effect notwithstanding anything contrary contained in Chapters 12 and 13 of the Police Rules, 1934".*

9. Learned counsels are poles apart in construing Rules 13 and 14 of the Rules 2013. Learned counsel for the respondent pleaded, firstly,

that express conditions provided in the Rules 2013 and schedule thereto command exclusivity in its application; and secondly, the Rules 2013, characterized as special instrument on the subject, calls for preferential treatment over the general conditions, while relying on the principle of statutory construction, “that special legislation, subsequent in time, excludes applicability of general law on the subject”.

Conversely, it is argued by the law officers that question of absolute exclusion only arises if subsequent special legislation is exhaustive or all-inclusive within itself and not otherwise.

10. Context being the advertisement under reference, controversy boils down to a fundamental question that whether the Rules 2013, and conditions prescribed therein, have to treated and read as exhaustive or all-inclusive conditions, admitting of no other qualifications / conditions for the purposes of considering eligibility of the respondent, notwithstanding the vision standards provided in Rule 12.16 of Police Rules 1934, appendix thereto or Notification of 1965. At first blush and upon threadbare analysis, textual reading of Rule 14 of the Rules 2013 clearly suggests that over-riding effect provided in terms thereof is not absolute but cautiously qualified – seemingly limited and preference extended to the extent of any inconsistency, if found qua Chapters 12 and 13 of Police Rules, 1934. Rules 13 and 14 of the Rules 2013 complement each other, which require conjunctive reading.

Argument by respondent’s counsel that absolute exclusivity was extended to the minimum qualifications in the schedule by virtue

of Rule 14 of the Rules 2013, in the context of other requisite qualifications, is wrong on two-counts. Firstly, absolute exclusion of other conditions, available and attracted in terms of Rule 12.16 of the Police Rules 1934 and appendix thereto was neither intended nor any such effect could be extended while undertaking recruitment, unless any particular requirement under Chapter 12 of the Police Rules 1934 is found contrary to the qualifications identified in the schedule to the Rules 2013. Expression *“these rules shall have effect notwithstanding anything contrary contained in Chapters 12 and 13 of the Police Rules 1934”* must be accorded due deference, as long as Rules are not amended to otherwise limit or expand the scope of inconsistency(ies). Hence, overriding effect is restricted to the extent of inconsistency and not otherwise. Mere non-mentioning of any qualification, otherwise identified in the Rule 12.16 and appendix thereto or in the Notification of 1965, could not be construed as conscious omission. Evidently, Rules 2013 are not a complete code in itself. Secondly, alternate plea that indication of express conditions entails implied repeal of the requirements under Rule 12.16 of the Police Rules 1934 is also without substance. No question of implied repeal arose upon textual reading of Rule 14 of the Rules 2013. Argument is otherwise illogical. No recruit could claim absolute entitlement to the appointment against post under reference, simply upon claiming fulfillment of minimum qualifications in the schedule to the Rules 2013. It is reiterated that qualifications prescribed in the schedule constitute bare minimum requirements, which have to be read in conjunction with other applicable qualifications, not otherwise inconsistent. Bare recommendations by the Commission were not

enough to secure appointment, unless medical fitness of the recruit is certified in terms of Rule 12.16 of the Police Rules 1934. Rule 12.16 is reproduced hereunder, for ease of reference,

12.16. Recruits-Medical examination of. - (1) Every recruit shall, before enrolment, be medically examined and certified physically fit for service by the Civil Surgeon. A certificate, in the prescribed form (10.64), signed by the Civil Surgeon personally, is an essential qualification for enrolment - (vide Fundamental Rule 10).

The examination by the Civil Surgeon will be conducted in accordance with the instructions issued by the medical department and will test the eyesight, speech and hearing of the candidate, his freedom from physical defects, organic or contagious disease, or any other defect or tendency likely to render him unfit, and his age. The candidate must strip for examination, a loin covering being allowed except when the examination is being completed, and any candidate who refused to do so must be rejected. The conditions of police service make it necessary that the medical examination of candidates should be strict. Candidates shall be rejected for any disease or defect which is likely to render them unfit for the full duties of a police officer.

(2) Superintendents are themselves responsible for rejecting candidates whose general standard of physique and intelligence is unsatisfactory; only those candidates should be sent for medical examination whom the Superintendent has accepted as being up to the required standards in these respects. (See Appendix 12.16).

For convenience, Rule 10.64 is also reproduced, on account of its reference in the Rule 12.16 of Police Rules 1934:-

"10.64. Health and age certificates. - A medical certificate of health is required in support of the first claim made for the pay of a person substantively appointed to a permanent post in Government service. Such certificate shall, in all cases of appointments in the police department be in Form 10.64 and shall be signed by the Civil Surgeon of the district in which the appointment is made. In the case of all provincial and subordinate service officers who receive their first permanent appointments in ranks of and above that of sub- inspector, the health certificate shall be attached to the first pay bill. In the case of persons who receive their first appointments in lower subordinate rank the health certificates shall be attached immediately to their character rolls (or, in the case of non-enrolled

establishment, service books) and a certificate to the effect appended to the standard form of lower subordinates' pay bill. When a lower subordinate is promoted to the rank of assistant sub-inspector, his date of birth or age, according to the health certificate granted on his first appointment to Government service, shall be endorsed on the bill in which his new pay is first drawn.

11. Rule 12.16 of Police Rules 1934 and appendix thereto talk of mandatory requirement of the medical certificate, before declaring candidate eligible and fit for the post – and medical certificate requires affirmation of the vision standards. Let's examine a hypothetical situation. No particular reference to any ailment was provided in the schedule to the Rules 2013 or Rule 12.16 of the Police Rules 1934. Does mere non-mentioning of a particular ailment would suggest that any prospective candidate, though suffering from said ailment, considered a disability for appointment to government service or for that matter police department, which ailment was discovered upon conduct of post-approval medical examination, could claim entitlement to the appointment on the premise that such ailment was not identified in the minimum qualifications. No such restrictive or exclusionary interpretation could be attributed to the Rules 2013, provided any inconsistency is found. Even otherwise no inconsistency could be claimed in the context of vision standards prescribed under Notification of 1965. Relevant clause of the Notification is reproduced hereunder,

6. *Visual Standard*

6.(i)

6.(ii) *Police Department.*

Distant Vision 6/9 in each eye without glasses. Near vision as in Civil Service. They should have good muscle-balance, visual fields and colour vision, night vision and binocular vision".

If we go by the erred construction of the Rules 2013, proposed by learned counsel for respondent, which claimed that requirement(s) of “*good muscle-balance, visual fields and colour vision, night vision and binocular vision*” *per se* stood excluded for being not appearing in the schedule to the Rules 2013, and such disabilities, as identified in the Notification of 1965, are not attracted. This implies that even a person with poor night vision could claim entitlement to enrolment on the premise that no particular reference to such defect in the vision was found in the advertisement or the Rules 2013. This construction is fallacious, even bordering absurdity. We repel the argument that identification of bare minimum qualifications in the advertisement and non-disclosure of each and every qualification or disqualification in the Rules 2013 would imply exclusion of all other conditions, which otherwise form part and parcel of requirements for determining medical fitness. In essence, conditions, in addition to those minimally prescribed in the Rules 2013, are characterized as supplemental or incidental conditions and vision standards, provided in the Notification of 1965, constitute supplemental / incidental conditions – to be read as part and parcel of the Rules 2013 and for that matter Rule 12.16 of the Police Rules 1934. In brief, claim of exclusion of vision standards in Notification of 1965 manifest erroneous construction of Rule 14 of the Rules 2013, when no inconsistency is otherwise found. Notably, legality or vires of the Notification of 1965 was not questioned, either before us or before learned Single Judge-in-Chambers. In view of aforesaid, we, for the present purposes, hold that appointment / enrolment was subject to the declaration of medical

fitness in terms of Rule 12.16 and appendix thereto and prescribed vision standards.

12. Now we address the question of limitation. Record is examined, which depicts that appeal against order of 06.12.2021 was initially filed on 23.12.2021, wherein various office objections were raised, and seven days were allegedly allowed for removal of objections. Appeal was re-filed on 27.01.2022, which came up for hearing on 31.01.2022, not as an objection case but as a normal appeal. Objection Form, with endorsement dated 23.12.2021, is examined which contained signatures of Assistant Advocate General, Punjab, Bahawalpur with endorsement that “objection has been removed”. There is no indication regarding the date of return of appeal or time of removal of objection, as noted on the Objection Form. It is not pleaded that order of office objections were notified on the notice board. Be that as it may, if seven days were considered to be granted for removal of office objection on 23.12.2021, then same had to be removed by 31.12.2021, which cut-off date fell in the midst of Court’s winter vacation. This aspect makes the requirement of notice under Rule 9-A, Part A(a), Chapter 1, Volume V of Rules and Orders of the Lahore High Court, Lahore extremely essential – if private person is held entitled to notice in terms of Rule 9-A, government cannot be deprived of this treatment. Apparently, there is no indication of issuance of notice or affixation of order of objections on the notice board. The necessity of notice / affixation of order of objection was discussed and affirmed in various judgments, significance whereof is reiterated in the case of Chief Executive, PESCO Department, Government of Khyber Pakhtunkhwa, Peshawar and others V. Afnan

Khan and another (2021 SCMR 2100). Decision in the case of Asad Ali and 9 others V. The Bank of Punjab and others (PLD 2020 Supreme Court 736) needs consideration, which is found distinguishable for reasoning discussed *infra*. Firstly, significance of notice under Rule 9-A was not in issue therein. Secondly, there was no plausible explanation qua conspicuous delay of six months. Thirdly, facts are distinguishable; instant appeal was filed under the signatures of Government Pleader of Punjab and question of ascertaining proper authorization otherwise pales into insignificance in wake of non-compliance of mandate of Rule 9-A. Fourthly, instant appeal was taken up for hearing on 31.01.2022, wherein no objection regarding limitation was raised before learned Division Bench. However, after hearing of the appeal on various dates objection regarding limitation was raised on 22.09.2022, and thereafter application under Section 5 of the Limitation Act, 1908 for condonation of delay was submitted.

Fifthly question of limitation was not decided by the High Court in terms of the facts of the case of Asad Ali (supra) but by the Tribunal constituted in terms of the Industrial Relations Act, 2008. Sixthly, it was observed, in the case of Asad Ali (supra), that question of limitation would finally be examined by the Court/Presiding Officer, even if office objections were raised and not removed within the allocated time. In the context of absence of any notice in terms of Rule 9-A *ibid*, guidance is solicited from the decisions cited as Mst. Sabiran Bi V. Ahmad Khan and another (2000 SCMR 847) and Farman Ali V. Muhammad Ishaq and others (PLD 2013 Supreme Court 392), which judgments reiterate the necessity and effect of failure to notify factum of objections on the notice board. [Decision in

the case of Farman Ali (supra) was discussed in the case of Afnan Khan (supra)]. There is another significantly notable aspect of this particular case. No question of accrual of any right of the respondent is otherwise involved. Decision in the case of "Province of the Punjab, etc. V. Attique Zaidi, etc." [ICA No.162 of 2015] was not brought to the attention of learned Single Judge-in-Chambers, hence, judgment subject matter is *per incuriam*, which was rendered in ignorance of previous decision, otherwise having binding effect.

13. In view of the narrative above, we hold that sufficient cause is available to condone the delay, if any otherwise occasioned, and we observe that failing to exercise jurisdiction in condoning delay would otherwise perpetuate an obvious illegality.

14. Case law referred, particularly decision in the case of Satya Prakash Vasisht (supra), by Hon'ble Supreme Court of neighboring country, is not attracted, wherein the law existing and applicable thereto was interpreted. Controversy involved recapped - Question posed is not concerned with the effect of color blindness on the nature of duties to be performed and difficulties encountered but whether such deficiency constitute medical unfitness for the post advertised, wherein scope of duties to be performed was not specifically identified and it was not clear that what kind of duties would be assigned to the recruit(s), combat or non-combat. We have already discussed legislative framework entailing color blindness, for the purposes of present matter, as cause for declaring respondent medically unfit, in absence of any inconsistency qua vision standards prescribed. No inconsistency is found in the minimum qualifications

prescribed in the schedule to Rules 2013 with Rule 12.16 of the Police Rules 1934 and vision standards prescribed in Notification of 1965. No case for any discrimination or unfairness is made out. Any reference to the conditions prescribed by Federal Public Service Commission, specifically providing for color blindness as disqualification for the purposes of employment in Railways department, is not relevant for present purposes.

15. We hold that decision in the case of *Attique Zaidi* (supra) is a good law and judgment impugned hereby is contrary to the ratio settled therein, hence judgment impugned is declared illegal and of no legal effect.

16. Instant appeal is **allowed** in aforesaid terms. No order as to costs.

(MUZAMIL AKHTAR SHABIR)
JUDGE

(ASIM HAFEEZ)
JUDGE

(MUHAMMAD WAHEED KAHN)
JUDGE

Imran/*

Approved for reporting.

JUDGE

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