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JUDGMENT SHEET

LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.1802/2024

Ehtisham Ali **Versus** Province of Punjab, etc.

J U D G M E N T

Date of Hearing:	29.10.2024
Petitioner(s) by:	Syed Anjum Abbas, Advocate.
Respondent(s) by:	Mr. Imran Shaukat Rao, Assistant Advocate General alongwith Hassan Askari, Inspector

Anwaar Hussain, J. The petitioner, appointed as constable, is member of Punjab Police and later on applied for the post of Sub-Inspector, on 07.11.2020, through application bearing No.47100596 and qualified the written examination, interview as well as medical test and admittedly, was recommended for the post of Sub-Inspector, by the Punjab Public Service Commission (“the PPSC”) whereafter appointment order dated 03.08.2023 was issued, however, during the process of scrutiny/verification of the antecedents, it transpired that a criminal case bearing FIR No.269/2023 dated 16.06.2023, under Section 392 Pakistan Penal Code, 1860, was registered with the Police Station Murree, Rawalpindi and hence, on the instructions of Inspector General of Police, Punjab/respondent No.2, *vide* impugned order dated 30.04.2024, the appointment of the petitioner was withdrawn.

2. Learned counsel for the petitioner submits that appointment of the petitioner has been withdrawn on the basis of an FIR registered against him, in which, the petitioner has been found innocent during the departmental inquiry and the petitioner has also been acquitted as his application under Section 249-A of the Code of Criminal Procedure, 1898 (“Cr.P.C”), has been allowed and therefore, the

impugned order dated 30.04.2024, is liable to be set aside and the petitioner be allowed to join his duty as Sub-Inspector.

3. Conversely, learned Law Officer alongwith departmental representative has not denied that the FIR was registered after submission of the application and the petitioner was found innocent during the departmental inquiry, however, asserts that subsequently another inquiry was conducted wherein he was found guilty, therefore, the impugned order was justly passed. The departmental representative could not deny that the petitioner's application under Section 249-A, Cr.P.C was accepted, *vide* order dated 18.12.2023, and he was acquitted from the case registered as FIR No.269/2023, by the Court of competent jurisdiction, which order has attained finality.

4. Arguments heard. Record perused.

5. Perusal of the record reveals that after thoroughly examining the record of the investigation, carried out by the police officials, learned Magistrate Section 30, Murree, *vide* order dated 18.12.2023 held as under:

“4. From the perusal of the file accused persons are nominated in the F.I.R. with the assertions that he knew the names of the accused persons from the locality but I.O. did not associate any inhabitants of the locality to identify the accused persons regarding said occurrence and no identification parade has been conducted to identify the accused persons with specific role in the instant case. ... Moreover, no recovery has been effected from accused Ehtisham Ali.

5. ...

6. ...

7. Keeping in view the facts and circumstances discussed above, this court would not hesitate to say that there is no probability of conviction of accused persons, if even entire remaining evidence be recorded and thus they are acquitted from the instant case, under Section 249-A Cr.P.C.”

(*Emphasis supplied*)

Moreover, before the acquittal of the petitioner, regular departmental inquiry was held and report bearing No.PA/723/PD dated 15.08.2023 by the Superintendent of Police, *Potohar* Division, Rawalpindi, was prepared and submitted with following conclusion/findings:

“CONCLUSION/FINDINGS”

By considering/examining all the relevant papers i.e. charge sheets, written reply to charge sheets submitted by above said official and progress report as well as other circumstances of the cases, it transpired that during investigation of case FIR No.269 dated 16.06.23 u/s 392 PC PS Murree, weapon of offence used in the occurrence has been recovered from Saim Tariq Abbasi and Hammad Sarwar and on the pointation of Hammad Sarwar, car No.ED708 used in the commission of crime has also been recovered and nothing has been recovered from Constable Ehtisham Ali. During enquiry it revealed that constable Ehtisham Ali No.4023 went to Kashmir point on the call of Hammad Sarwar being ex constable (colleague) but he was not participated in the said commission of crime. **Prima facie, constable Ehtisham Ali No.4023 seems not found involved case FIR No.269 dated 16.06.23 PC PS Murree,...”**

(Emphasis supplied)

Though there is no bar as to holding of the second inquiry, however, on a pointed question put by this Court, learned Law Officer as also the departmental representative could not refer to and/or put-forth any material reasons that prompted the initiation of the second inquiry, which also reflects negativity *qua* the merits of the impugned order. In addition, the respondent-department failed to substantiate that the petitioner was associated with the second inquiry, which runs counter to the principle of natural justice and due process embodied under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 (“the **Constitution**”). In this manner, the respondent-department seems to have fallen in error. Since the Court of competent jurisdiction, i.e., Magistrate Section 30, has clearly found

that necessary material for commission of alleged offence is not made out from the facts of the case in addition to the fact that complainant of the case was also not interested to prosecute the case, therefore, in such an eventuality, the impugned order is without any lawful basis.

6. The matter can be examined from another angle. This Court in exercise of judicial review can look into and determine the reasonableness of a particular policy as well as the impact of the applicability thereof, particularly, if such policy has a bearing on the fundamental right-to prosper, through appointment to a particular post, forming part of right to quality life by participating in competitive process for selection to a particular post. The underlying rationale of the policy of the respondent-department to withdraw appointment as Sub-Inspector from a Constable who is found in a criminal act-registration of case, seems to maintain discipline in the force by shunning out such candidates who could potentially be troublesome for the discipline. In the instant case, strangely and ironically enough, the petitioner found to be involved in FIR can perform his duties as a Constable, by remaining part of the force but cannot be offered appointment as Sub-Inspector – a position that the petitioner earned through hard work and his intellectual abilities, which otherwise is appreciable and laudable that the petitioner accepted the post (of Constable) in the lower rank when it was offered and made his way through hard work and dedication to the higher rank (Sub-Inspector) which is reflective of the dynamic aspect of the petitioner. Thus, the policy, the underlying rationale and the manner in which it has been implemented in the present case create a paradoxical situation and conflicting position of the respondent-department, the answer to which is absent on the part of the respondent-department. The petitioner could be or could not be troublesome both as Constable and as Sub-Inspector. The impugned

order of withdrawal of the appointment amounts to depriving the petitioner from the fundamental right of livelihood, as guaranteed under the Constitution, which cannot be countenanced.

7. In view of the above discussion, the present petition merits acceptance and hence, **allowed**. As a corollary, the impugned withdrawal order dated 30.04.2024 is set aside and the respondents are directed to proceed further in accordance with law *qua* the appointment of the petitioner as Sub-Inspector.

(ANWAAR HUSSAIN)
JUDGE

Approved for Reporting

Judge

Tahir Noor