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JUDGMENT SHEET

LAHORE HIGH COURT LAHORE

JUDICIAL DEPARTMENT

Writ Petition No.50582 of 2022

Syed Ali Hassan Naqvi Versus Senior Superintendent of Police, etc.

J U D G M E N T

Date of Hearing:	12.09.2023
Petitioner by:	Mr. Muhammad Jawad Zafar, Advocate. Mr. Muhammad Talha Mushtaq, Advocate.
Respondents by:	Ms. Samia Khalid, Additional Advocate General. Mr. Imran Khan, Assistant Advocate General. Muhammad Saleem Chughtai, AIG, Legal Punjab. A.D. Dhakku, Inspector Legal, CPO, Punjab. Tahir, Inspector, Office of RPO, Gujranwala. Ali Shan, SI, Office of CPO, Gujranwala.

Anwaar Hussain, J. Pursuant to the advertisement dated 15.12.2020 published by respondent No.2, for recruitment to the post of Constables/Lady Constables in Punjab Police Department, District Gujranwala, the name of the petitioner, on the recommendation of the Recruitment Board, was reflected at serial No. 51 of the final list of candidates as the petitioner had passed through the physical test, written exam and the interview. However, the said list was subject to medical fitness, verification of antecedents of character and documents submitted by the petitioner and other applicants. The smooth sailing of the petitioner came

across a hurdle when the petitioner approached for medical fitness test. He was apprised that he is not entitled and qualified for the said recruitment process as he, subsequent to the last date of submission of recruitment form i.e., 03.01.2021, was found involved in criminal case bearing FIR No.424/2021 dated 29.09.2021, in respect of offences under Section 431 of the Pakistan Penal Code, 1860 (**“the PPC”**), read with Section 16 of the West Pakistan Maintenance of Public Order Ordinance, 1960.

2. Feeling aggrieved, the petitioner approached this Court by filing present constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (**“the Constitution”**) on the ground that the rejection of the candidature of the petitioner is unlawful and against the fundamental rights of the petitioner to join a lawful profession, in accordance with law, inasmuch as the petitioner was acquitted from the charges in the above referred case by the Court of learned Judicial Magistrate (Section-30), Wazirabad, *vide* order dated 18.06.2022. In report and para-wise comments filed on behalf of City Police Officer, Gujranwala (respondent No.2), factual matrix of the case has been admitted, however, it has been pleaded that on the basis of Standing Order No.6/2015 issued, *vide* letter No.AD/E-III/801/XI dated 29.07.2022, the petitioner’s application was rejected as the petitioner was found guilty during the investigation carried out by the Police.

3. M/s. Muhammad Jawad Zafar and Muhammad Talha Mushtaq, Advocates on behalf of the petitioner submit that when the petitioner applied for the post of Constable in the month of January, 2021, no case was registered against him and registration of the criminal case is subsequent event in which the Court of competent jurisdiction has acquitted the petitioner from the charges levelled therein.

4. Conversely, Ms. Samia Khalid, Additional Advocate General along with Mr. Imran Khan, Assistant Advocate General on instructions and while relying upon the strength of report and para-wise comments, submit that the police department is a disciplined force obligated with the duty to maintain public order and security and the police personnel are often obligated with discharging sensitive duties. Therefore, recruitment of anyone who has been involved in a criminal activity reflected by registration of FIR may entail risk in the discharge of those duties as well as create difficulties in maintenance of discipline within the force, hence, the respondents were justified in denying the appointment to the petitioner. Add that the police department has a uniform policy and if the candidate in any manner is involved in any criminal case by way of registration of FIR or conviction thereunder, such candidate is debarred from seeking employment on the strength of Standing Order No.6/2015, which is being adhered to across the Punjab, without any discrimination.

5. In rebuttal, learned counsel for the petitioner submits that the police department is in habit of making pick and choose whenever the recruitment process is initiated. In this regard, case of one Shahnawaz Hussain s/o Muhammad Ishaq was referred, who was appointed as Constable, *vide* office order No.6152/SRC, dated 13.09.2022, despite the fact that he was accused in case FIR No.1/2021 registered with Police Station *Tatlay Aaly*, District Gujranwala.

6. Arguments heard. Record perused.

7. The core legal issue that requires determination and opinion of this Court is to examine whether a candidate seeking employment with the police department can be debarred from being appointed merely on the ground that criminal case was registered against the said candidate after submission of his application, more

particularly, when the applicant was acquitted by the Court of competent jurisdiction?

8. Before answering the above referred legal question, it will be in fitness of things to reproduce relevant part of the Standing Order No.6/2015 that reads as under:

“III) **All those candidates** who during character verification have been **found involved in criminal cases** (either under trial **or acquitted** on multiple grounds) shall not be appointed in Police Department as constable, in the light of instructions issued vide this Office Order No.SE-IV/7317-70/II, dated 26.06.2014.

IV) All the candidates submit an affidavit for non-involvement in criminal cases at the time of submission of application form and if the case is registered against an applicant after the last date of submission of application form, **but the applicant is not challaned & declared innocent; then that would not be ground for rejection of an applicant.** However, DPO must examine that case is not cancelled or accused declared innocent due to compromise between parties in the light of para 23 of Standing Order No.06/2015 amended vide No.SE-III/1105-60/XV dated 01.06.2018.”

(Emphasis supplied)

9. It has become stone-etched principle of law that mere registration of FIR does not render a person guilty of commission of a crime, under the law. Registration of FIR is merely a step to put the investigative machinery of the state into motion to collect the evidence, which may culminate into the acquittal or conviction of the accused by the competent Court of law, exercising judicial power of the state. While at the one end of the spectrum lies the fundamental rights of the petitioner to pursue a profession and/or business of his choice and to be dealt with in accordance with law, as envisaged under Article 4 of the Constitution, the need to maintain the police department as a disciplined force tasked with the obligation to maintain law and order in the society lies at the

other end. Hence, any aspirant to join police force must not have criminal antecedents as the same may result in recruiting of such personnel who may create difficulties in maintaining the force as disciplined one.

10. Perusal of the record reveals that there is no denial on part of the police department that one Shahnawaz Hussain was appointed as Constable despite the fact that a criminal case was registered against him, hence, it is crystal clear that the police department has not been consistent and uniform in its application and construction/interpretation of the Standing Order No.6/2015 as evident from the recruitment of the above referred Shahnawaz Hussain, considering his acquittal in the criminal case. It is also imperative to note that this Court directed the respondents to submit a list on behalf of the Inspector General of Police, Punjab to establish that no discrimination has been done while appointing any individual against whom a case was registered after submission of his application and later on such candidate was acquitted to substantiate stance that a uniform policy has been adopted. Needful was done and a list was provided to this Court on 01.06.2023, which depicts that one Talha Ijaz applied for recruitment as Constable during the year 2020-21 and though FIR No.2051 of 2020 under Section 148/149 of PPC was found registered against him after submission of application but he was appointed as Constable. Moreover, apart from the case of Talha Ijaz and Shahnawaz Hussain, the said list also depicts that there have been as many as 15-candidates, who were appointed as Constables/Lady Constable although criminal cases had been registered against them after submission of their respective application forms and they were later on acquitted. When confronted with the cases of above-referred Shahnawaz Hussain and few others, it was vehemently asserted on behalf of the respondents that in all those cases, the applicants concerned were extended appointments as they were

declared innocent during the investigation and later on acquitted by the competent Court whereas in the instant case the petitioner has been found guilty during the investigation and only acquitted by the Court. The findings during the investigation have prevailed with the respondent department while rejecting the petitioner's candidature.

11. This Court is of the opinion that the argument of the police department cannot be countenanced as the object and purpose of the investigation by the police is the collection of evidence that cannot conclusively determine the guilt or innocence of the accused. This takes me to the nub of the matter that is to determine whether acquittal in any case and in all situations makes the antecedents for the purposes of recruitment untainted obligating the respondent department to recruit a candidate if he qualifies otherwise. Acquittal in a criminal case connotes that it has been found that a person (for the purpose of recruitment means any applicant like the petitioner) has been accused of the offence maliciously and falsely, and that after his acquittal no blemish whatsoever is attached to him. This Court is of the opinion that acquittal should be on the merits and not on account of any compromise/compounding of the offence. This interpretation gets credence from para (IV) of the Standing Order No.6/2015 as the same clearly contemplates that *if the case is registered against an applicant after the last date of submission of application form, but the applicant is not challaned & declared innocent; then that would not be a ground for rejection of an applicant and the DPO must examine that case is not cancelled or accused declared innocent due to compromise between parties.* Meaning thereby that it is only when the declaration of innocence and/or the acquittal is not on merit but for some other reasons such as compromise that the department can reject the candidature of the applicant. In the instant case, while the petitioner was found involved in the commission of the offence

during the investigation, the learned Magistrate, vide order dated 18.06.2022 held as under:

“3. As per crime report, the allegation against the accused persons is that on 28.09.2021, they gathered at “Allahwala Chowk” while carrying black and red flags, who had also blocked the road. Except this no other allegation whatsoever was leveled against them. The record transpires that, as per crime report, the complainant/TASI witnessed the occurrence with his own eyes yet, got registered the case at police station on next day, without explaining the said delay. The question, therefore, arises that had he or other police officials present at the spot then why law of the state was put into motion after due deliberation and consultation of one day. Besides, the complainant did not disclose the wording of alleged chanted slogan in the crime report nor stated about the time of alleged blockage of public road by the accused persons. Even the I.O did not join in investigation any private person who may have complained regarding the said blockage. Presence of any witness is also not shown by him in the site map plan. Besides above all, nothing has been attached and even alleged by the complainant that permission for initiation of proceedings u/s: 16 of MPO, 1961 (sic) was ever sought or extended by competent authority. Needless to mention here that necessary ingredients for attraction of said penal provision is also missing in the crime report. All the above, therefore, make the instant case as full of doubts and dents, whereby no probability of conviction exists in view of the attending circumstances of the case. Further proceedings, therefore, would be a futile exercise and an abuse process of law and court as well. Resultantly, all the accused persons of crime report are hereby acquitted while invoking provisions u/s: 249-A Cr.P.C.”

(Emphasis provided)

Above quoted part of the order of the learned Magistrate clearly depicts that the petitioner was acquitted on merits and not on the

basis of any compromise. The police department is interpreting the Standing Order No.6/2015 in general and the opinion of the Investigating Officer in particular in a manner as if the opinion of the Investigating Officer carries precedence over the judicial scrutiny of the matter, which certainly is misconceived.

12. Moreover, the police department seems to have fallen in grave error in according sanctity to the finding of innocence in the investigation in case of Shahnawaz and others and not to the petitioner in instant case where the petitioner has been acquitted by the Court on the ground that the necessary material for constitution of the alleged offence is not made out from the facts of the case. Judicial finding as to non-constitution of the offence *vis-à-vis* finding of the investigation as to innocence of an offence must command more reverence, respect and legal authority on two counts. Firstly, it is settled law, as observed above, that the purpose of investigation is to collect evidence and any finding/determination of guilt/innocence by the investigation agency is neither binding on the Court nor carries any legal backing. Secondly, the petitioner in the instant case has been acquitted not on the basis of some compromise rather the offence alleged against him from the very facts of the case was held to be not made out before the Court of competent jurisdiction. Learned Law Officers could not refute that judicial verdict in favour of the petitioner, on merits, cannot be considered as subservient to the police opinion recorded against the petitioner. However, Muhammad Saleem Chughtai, AIG, Punjab Police, who is in attendance today, states that the Supreme Court of Pakistan in C.P. No.4709/2019, titled “Zeeshan Ahmad v. Govt. of Punjab through Inspector General of Police, Punjab, Lahore and others”, *vide* order dated 01.11.2022 held that even if the petitioner is acquitted from the charges, the said findings are not binding on the police department. The contention of Muhammad Saleem Chughtai, AIG, Punjab Police is misconceived inasmuch as the

facts of case of Zeeshan Ahmad supra, are totally distinguishable from the facts and circumstances of the present case. In Zeeshan Ahmad supra, the criminal case was registered against the applicant/petitioner therein who failed to disclose the same in his application and pleaded before this Court, at Multan Bench, that non-disclosure of registration of a criminal case was immaterial since the applicant therein was subsequently acquitted but this Court in the said case as also the Supreme Court of Pakistan held that mere non-disclosure is fatal and amounts to concealment of facts and hence, such a candidate is not fit person to be offered an appointment in the police department. On the contrary, in the instant case, there was no criminal case registered against the petitioner at the time when he applied for the appointment as Constable and hence, there was no suppression of facts and therefore, the reliance placed on case of Zeeshan Ahmad supra, is misconceived.

13. In view of the above discussion, this petition has merits and is accordingly **allowed**. The respondents are directed to proceed further in the matter for appointment of the petitioner, in accordance with law.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Maqsood