

Form No: HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No. W.P. No. 53726/2019

Nisar Ahmad **Versus** Inspector General of Police, etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge and that of parties or counsel, where necessary
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05.11.2024 Mr. M. Safdar Shaheen Pirzada, Advocate for the petitioner assisted by Mr. Nasir Mehmood Ch., Advocate. Rana Shamshad Khan, Additional Advocate General, Punjab.

Briefly put, the resume of the facts, spelt out in this petition, is that pursuant to advertisement got published by the Commandant Punjab Constabulary, in Daily Nawa-e-Waqt, the petitioner being Ex-Army man, applied against the post of Head Constable. Upon conclusion of the recruitment process, the petitioner, alongwith others, was selected against the aforesaid post, on contract basis for a period of five years, *vide* Appointment Order, dated 23.12.2006. Upon completion of satisfactory service, the contract period of the petitioner remained extended from time to time. In the year 2013, Government of the Punjab introduced a policy regarding regularization of contract employees. Thereafter, services of the petitioner were terminated *vide* order, dated 24.12.2014 against which he,

alongwith others, filed Writ Petition (No.34339/2014) before this Court which was decided through order, dated 15.05.2015, directing the department to consider his case for regularization within sixty days. Pursuant to aforesaid order of this Court, the department took up cases of 1449 police personnel and reinstated only 20 out of them. Being dissatisfied with the exclusion of his name from amongst the list of reinstated employees, the petitioner filed Writ Petition No.4856/2016 which was disposed of through order, dated 16.04.2018, with the direction to the department for decision of the matter relating to regularization of the petitioner through Scrutiny Committee. Pursuant to order, dated 16.04.2018, passed by this Court in Writ Petition (No.4856/2016), the competent authority took up the case of the petitioner and rejected his request for reinstatement and regularization *vide* order, dated 07.09.2019; hence, this petition.

2. Learned counsel for the petitioner submits that since the petitioner was fully eligible for appointment against the post of Head Constable, his request for reinstatement and regularization of his services could not be turned down especially in the light of documents brought on record by him through Miscellaneous Application (C.M. No.1/2023); that it is clear case of discrimination inasmuch as many

other similarly placed persons, recruited from amongst Ex-Army men, have been reinstated and regularized but request of the petitioner was turn down on the basis of untenable grounds; that rule 18 of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974, mandates that eligibility of a person to hold a post can only be determined at the time of initial induction in service and subsequently the department cannot be allowed to re-adjudge the suitability of said person for any future service prospect; that since the petitioner was inducted in service on the basis of his meritorious service in Pakistan Army, his eligibility/suitability could not be doubted by the Police department; that according to Rule 12.1, Chapter-XII of the Police Rules, 1934, even a Head Constable can be appointed directly; that this Court through judgment, dated 25.01.2019, while accepting Writ Petition (No.23900/2016) ordered for reinstatement of terminated constables but no reason to single out the case of the petitioner has been given in the impugned order and that the petitioner would be satisfied if his matter is referred to the competent authority for redressal of his grievance.

3. Learned Law Officer, while opposing the submissions made by learned counsel for the petitioner and defending the order impugned in this petition, states that since the

petitioners, in the referred case (Writ Petition No.23900/2016), were constables, the case of the petitioner being Head Constable cannot be considered at par with them; that according to Article 7(3) of the Police Order, 2002, no direct recruitment can be made against the post of Head Constable, hence, the petitioner's request was rightly turned down by the competent authority; that even in the advertisement there was no mention of regularization, thus, the petitioner cannot seek regularization of his service in violation of terms and conditions stipulated in Appointment Order; that since the petitioner's contract expired on 28.12.2014, he has no case for reinstatement or regularization of his service and if he has any grievance relating to unexpired period of his contract, he could approach the Civil Court in the light of judgment reported as *Federation of Pakistan v. Muhammad Azam Chattha (2013 SCMR 120)* and that if the petitioner is of the view that there is any left out grievance, he can approach the relevant forum for redressal of his grievance.

4. Learned counsel for the petitioner, while exercising his right of rebuttal, submits that since no exception clause in the Policy, promulgated by the government for regularization of contract employees in the year 2013, has been mentioned the respondents cannot be allowed to

introduce the same of their own; that since there is no embargo in the Police Order, 2002 against recruitment for the post of Head Constable, the same cannot be allowed to be introduced at the whims of the respondents and that if the Police Order, 2002 does not permit direct recruitment against the post of Head Constable as to how the same was included in the advertisement. In support of his contentions, learned counsel has referred to following cases in the body of the petition I.A. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041), Pakistan through Ministry of Finance v. Muhammad Himayatullah Farukhi (PLD 1969 SC 407) and an unreported judgment, dated 25.01.2019, rendered by this Court in W.P. No.23900/2016, titled as Muhammad Riaz etc. v. Province of Punjab etc.

5. I have heard learned counsel for the parties in addition to going through the documents appended with this petition and those forming part of the report and parawise comments, submitted on the behalf of the respondents, in addition to case law cited at bar.

6. A perusal of the file shows that the entire case of the petitioner hinges upon the policy of the government of the Punjab, relating to regularization of contract employees

which was circulated through Notification bearing No.DS(O&M)S&GAD)5-3/2013, dated 01.03.2013. In my humble opinion, for just decision of the matter in hand and to appreciate that as to whether the case of the petitioner is covered under the said policy or not, perusal of the policy, under discussion, is of paramount consideration, therefore, the same, for convenience of reference, is imaged below:-



GOVERNMENT OF THE PUNJAB
SERVICES AND GENERAL ADMINISTRATION
DEPARTMENT (REGULATIONS WING)

Dated, Lahore the 1st March, 2013

NOTIFICATION

No.DS(O&M)(S&GAD)5-3/2013. The Chief Minister, Punjab, in exercise of the powers conferred upon him by rule 23 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, is pleased to order appointment of employees in BS-1 to 15, recruited on contract basis under the provisions of the Contract Appointment Policy issued by the S&GAD in 2004 against the posts presently held by them in various Government Departments of the Punjab, on regular basis, in relaxation of rule 4, 16 and 17 of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974. However, the contract employees working against posts in various' projects / programmes / PMUs / PMOs and other time-bound (one-time) development activities shall not be covered by this notification.

2. For the purpose of this notification, the Chief Minister, Punjab has further been pleased to withdraw the posts in BS-11 to 15 presently held by the contract employees, as mentioned in rule 16 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 from the purview of the Punjab Public Service Commission in terms of rule 5 of the Punjab Public Service Commission (Functions) Rules, 1978.

3. These appointments will, however, be subject to fulfillment of requirements of rule 18, 19, 20, 21 and 21-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974,

4. The following Scrutiny Committees shall scrutinize the relevant record of the contract employees in BS-1 to 15, and shall issue a certificate before issuance of appointment orders on regular basis by the respective Appointing Authorities:-

(A) **Scrutiny Committee at Provincial Level**
(For posts in BS-11 to 15 and others at provincial level)

(i)	Administrative Secretary/ Special Secretary / Additional Secretary concerned.	Convenor
(ii)	Additional Secretary / Deputy Secretary (Admn) concerned.	Member/Secretary
(iii)	Head of Attached Department concerned	Member
(iv)	Appointing Authority concerned.	Member

Note: The Departments may constitute one or more committees at their own level as per their requirements.

(B) Scrutiny Committee at District Level

(i)	District Coordination Officer concerned	Convenor
(ii)	Executive District Officer concerned.	Member
(iii)	Executive District Officer (F&P) concerned.	Member
(iv)	Appointing Authority concerned.	Member / Secretary

TORs of the above said Committees:-

- (a) To scrutinize the academic records (degrees / diplomas / certificates) and other relevant documents of the contractees.
- (b) To verify that the contract appointments were made in accordance with the provisions of the service rules regarding age limit, qualifications and experience and Contract Appointment Policy — 2004.

The above mentioned scrutiny process will, however, not be required for the contract appointments made on the recommendations of the Punjab Public Service Commission.

4. The contract appointees on their regular appointments shall remain on probation in terms of section 5 of Punjab Civil Servants Act, 1974 and rule 7 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974.

5. The service period of contract employees shall not be counted for any purpose (pension, gratuity, leave, etc.) on their appointment under the Punjab Civil Servants Act, 1974 and the rules framed there-under. The salary component of such employees shall be in accordance with the pay scales plus the usual allowances prescribed for the posts against which they are being appointed. They will, however, not be entitled to the payment of 30% social security benefit in lieu of pension or any other pay package being drawn by them.

6. However, pay of the contract employees appointed on regular basis in the basic pay scales shall be fixed at the initial of the respective pay scales and the increment(s) already earned during the contract appointment period shall be converted into Personal Allowance. The pay of those appointed on the basis of pay package will be fixed in consultation with the Finance Department. The decision of the Finance Department in this behalf shall be final. The Finance Department shall constitute an Anomalies Committee to resolve the issues arising out of appointments of contract employees on regular basis.

7. The contract employees who do not intend to be appointed on regular basis should furnish their option to this effect in writing within 30 days from the date of

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issuance of their appointment letters by the respective appointing authorities. They may continue with their present employment as per terms and conditions of their contract. However, no extension in their contract period shall be allowed. Those who intend to be appointed on regular basis need not to apply. The option once exercised shall be final.

BY THE ORDER OF THE CHIEF MINISTER, PUNJAB

SHAHNAZ NAWAZ
Secretary (Regulations), S&GAD

According to the afore-imaged Notification, the Terms of References (TORs) for Scrutiny Committee constituted

under the said Policy were *inter-alia* to verify as to whether contract appointments were made in accordance with the provisions of the Service Rules regarding age limit, qualification and experience. Insofar as the case in hand is concerned, the relevant rules are Police Rules, 1934 and Police Order, 2002. Article 7 of the Police Order, 2002 deals with constitution of Police, which for convenience of reference is reproduced here under:-

“7. Constitution of police.–

(1) The police establishment for each general police area shall consist of such numbers in the senior and junior ranks and have such organization as the Government may from time to time determine.

(2) The recruitment criteria, pay and allowances and all other conditions of service of the police shall be such as the Government may from time to time determine.

(3) The recruitment in the police other than ministerial and specialist cadres shall be in the rank of Constable, Sub-Inspector and Assistant Superintendent of Police.

(3a) The selection for direct recruitment in the rank of Constable shall be made on the basis of district of domicile.

(3b) The selection for direct recruitment in the rank of Sub-Inspector shall be made through Punjab Public Service Commission on the basis of police region in which district of domicile of the candidate is located and shall not exceed fifty percent of total posts in the rank of Sub-Inspector.

(3c) Subject to the rules–

(a) twenty-five percent of the quota reserved for departmental promotion to the rank of Sub-Inspector shall be filled through selection-on-merit by Punjab Public Service Commission from amongst police officers holding bachelor's degree in the rank of Head Constable and Assistant Sub-Inspector; and

(b) twenty-five percent departmental promotions to the rank of Assistant Sub-Inspector shall be made through selection-on-merit by Punjab Public Service Commission from amongst police officers holding bachelor's degree in the rank of Constable and Head Constable.

(4) The recruitment in the rank of Assistant Superintendent of Police shall be through the Federal Public Service Commission on all Pakistan basis.

(5). * * * * * (omitted)

(6). Every police officer while on police duty shall have all the powers and privileges of a police officer throughout Pakistan and be liable to serve at any time in any branch, division, bureau and section." (emphasis provided)

According to Sub-Section 3 *supra*, direct recruitment in police department, other than ministerial and specialist cadres, can be made against the ranks of Constable, Assistant Sub-Inspector and Assistant Superintendent of Police and there is no mention of the post of Head Constable in the said provision, meaning thereby that the post of Head Constable is not meant for direct recruitment. Moreover, according to rule 12.10 of Police Rules, 1934 Chapter XII,

Head Constables are to be appointed by promotion from selection grade constables. Further, according to Article 186 of the Police Order, 2002, the police functioning in the province of Punjab and Islamabad territory, immediately before the commencement of this Order, shall on such commencement be deemed to be police constituted under this Order, thus, reliance of the petitioner on Rule 12.1 *ibid* is of no help to the petitioner.

7. While responding to the objection raised by the learned Law Officer against appointment of the petitioner against the post of Head Constable, learned counsel for the petitioner, has referred to the advertisement pursuant whereto the petitioner alongwith others were selected through Appointment Order, dated 23.12.2006, to argue that if no appointment against the post of Head Constable could be made as to how the same was mentioned in the said advertisement. In my humble estimation, the advertisement, being referred by the learned counsel for the petitioner, is silent about the law/policy/rules/regulations under which the same was issued, meaning thereby that the recruitment from amongst the Ex-Army men were made purely on contract basis to cope with the law and order situation prevalent at that time. According to afore-imaged Notification, dated 01.03.2013, the Scrutiny Committee was given the task to

verify as to whether contract appointments were made according to the Contract Policy, 2004. Had the petitioner been appointed under the Contract Policy, 2004, the position might have been different, thus, reliance of learned counsel for the petitioner on the advertisement in question is of little importance.

8. Now taking up the plea of the learned counsel for the petitioner that according to Rule 12.1 Chapter XII of Police Rules, 1934, post of Head Constable can be filled in directly, I am of the view that though the referred rules deal with different categories of employees in the police, alongwith corresponding competent authority but the same does not enshrine that direct recruitment against the post of Head Constable is permissible. Moreover, rule 12.10 *ibid* being latter in time, enjoys precedence over the rule being referred by the learned counsel for the petitioner, thus the same does not lend any help to his client.

9. While addressing the Court, learned counsel for the petitioner vehemently agitated the point of discrimination and with a view to fortify his contention, learned counsel referred to judgment, dated 25.01.2019, passed by this Court in Writ Petition No.23900/2016. To appreciate the point urged by learned counsel for the petitioner, I have gone

through the referred judgment which on the face of it is quite distinguishable from the present case inasmuch as the petitioners in the said matter being Ex-Army personnel, were appointed against the post of Constables in the Punjab Police whereas the petitioner in the instant petition joined as Head Constable, thus, he cannot be allowed to take premium of the afore-referred judgment.

10. It is admitted position that lastly the contract of the petitioner was terminated *vide* order, dated 24.12.2014, upon completion of last extended period of contract. Though the petitioner had been pursuing his matter before different forums, including this Court, but failed to establish his right. Even today, learned counsel for the petitioner has not been able to refer to any identical case or decision to establish that a Head Constable, directly appointed, is eligible for regularization rather while showing totally professional approach, learned counsel for the petitioner frankly conceded that till date no Head Constable, appointed under the advertisement, subject matter of this petition, has ever been regularized. In this backdrop, the request of the petitioner for reinstatement and regularization cannot be given any weightage especially when he was allowed to complete his extended period of contract without any interruption.

11. Now taking up the plea of learned counsel for the petitioner that since eligibility of the petitioner to hold the post of Head Constable was determined by the relevant authority at the time of his induction in service, the departmental authorities could not be allowed to re-assess him in that regard. In this regard, I am of the view that perhaps learned counsel for the petitioner has raised said plea in oblivion of the contents of the regularization policy being pressed into service by the petitioner seeking his reinstatement and regularization. At the cost of repetition, it is observed that when the Scrutiny Committee was assigned the role to verify the appointment of a contract employee with specific reference to eligibility criteria, in particular, Contract Policy, 2004, the petitioner has no cheeks to raise objection against the scrutiny of the antecedents of the petitioner by the Scrutiny Committee.

12. It is well entrenched by now that extraordinary constitutional jurisdiction, vested in this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, can be used in favour of a person, whose right is being withheld by the executive despite the fact that same has been established under the relevant law. As far as, the case in hand is concerned, undeniably, neither the Police Rules, 1934 nor the Police Order, 2002 permits for direct

recruitment against the post of Head Constable rather the same is meant for promotion from amongst the Constables who are enlisted in List A and B, thus it is not fit case for exercise of extraordinary constitutional jurisdiction by this Court.

13. Now coming to the case-law referred in body of the petition, I am of the view that the same is inapplicable to the peculiar facts and circumstances of the case in hand inasmuch in none of the referred cases, it was declared that any person, who was appointed against the relevant rules, is entitled for regularization of his service.

14. For what has been discussed above, I see no force in this petition which is accordingly dismissed with the observation that if the petitioner feels that any of his grievance has been left un-attended, he would be at liberty to agitate his grievance before the relevant forum. No order as to costs.

(Shujaat Ali Khan)
Judge

APPROVED FOR REPORTING.

*M.Tahir**

Judge