

Stereo. H C J D A 38.
JUDGMENT SHEET
LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

I.C.A No.148/2024

Government of the Punjab etc.
Versus
Muhammad Zafar Iqbal

J U D G M E N T

Date of Hearing	14.10.2024
Appellants by:	Mr. Bashir Ahmad Buzdar, Assistant Advocate General alongwith Muhammad Khan, Office Superintendent, Zaki Rehan, DSP/Legal, Sajjad Hussain, ASI in the office of DPO, Muzaffargarh and Baqir Murtaza, Assistant, Punjab Public Service Commission.
Respondent by:	Mr. Tahir Mehmood, Advocate.

Anwaar Hussain J. This Intra Court Appeal (“ICA”), in terms of Section 3 of the Law Reforms Ordinance, 1972 is directed against judgment dated 12.06.2024 passed by the learned Judge-in-Chambers through which constitutional petition bearing W.P No.3085/2023, filed by the respondent, has been allowed and the decision of the Administrative Department for conducting second measurement of the height was declared illegal.

2. By way of factual background, it has been noted that the respondent applied for the post of Sub-Inspector in Punjab Police Department through Punjab Public Service Commission (“the PPSC”) in terms of advertisement No.29/2020 published by the PPSC. As per the pre-conditions mentioned in the advertisement dated 22.10.2020, the respondent was medically examined in the District Headquarters Hospital, Muzaffargarh and found physically fit for recruitment against the post of Sub-Inspector. Thereafter, the respondent appeared in the written examination and interview,

whereafter, the PPSC issued merit list by recommending the respondent to be appointed as Sub-Inspector against open merit and his name was reflecting at Serial No.2 of the merit list. Thereafter, the appellant-department referred the respondent for measurement and his height was found as 5.6-3/4 feet on 16.02.2023, hence, his appointment letter was not issued. The respondent impugned the act of appellant-department *qua* measurement, through the constitutional petition by alleging that such act of the appellant-department is liable to be set aside being not warranted under the law, which was allowed by the learned Judge-in-Chambers.

3. It is the case of the appellant-department that the learned Judge-in-Chambers has erred in law while allowing the constitutional petition of the respondent, inasmuch as the requirement of height is one of the core conditions for appointment to the post of Sub-Inspector and the respondent failed to meet the said condition. Learned Law Officer submits that passing of direction to issue appointment letter manifest interference in recruitment process which practice has been deprecated by the Constitutional Courts.

4. Conversely, learned counsel for the respondent supported the impugned judgment and while placing reliance on the order dated 20.03.2023 passed by a learned Single Bench in W.P No.83404/2022 titled "Huma Hameed v. Chief Secretary, Punjab and others" (at Principal Seat), as well as order dated 19.07.2023 passed by the learned Division Bench in ICA No.22155/2023 titled "Muhammad Masoom v. Inspector General of Punjab Police and others" (at Principal Seat), submits that once the respondent was medically examined in accordance with the advertisement, there was no room for subsequent/second measurement of height.

5. Arguments heard. Record perused.

6. The nub of the matter is to examine as to whether in terms of the applicable rules and regulations, the appellant-department was

justified in conducting the second measurement of the height. Before rendering opinion, it is imperative to observe that the appointment of Sub-Inspector is admittedly governed by the Sub-Inspectors and Inspectors (Appointment & Conditions of Service) Rules, 2013 (“**Rules 2013**”) read with Volume-II (Appointments and Enrolments) of the Police Rules, 1934 (“**Police Rules**”). Admittedly, the required height is 5'-7" in terms of Rule 12.15 of the Police Rules, whereas Rule 12.16 contemplates that every recruit is required to be medically examined before the enrolment. The said rule reads as under:

“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).”

Whereas in the advertisement bearing No.29/2020 dated 22.10.2020, following conditions *qua* physical standard has been mentioned:

“Candidates are required to mention Physical Standard in their Online Application Form as per Certificate of Physical Standard issued by the Medical Superintendent of District Headquarters Hospitals or Service Hospital, Lahore or Police Hospitals shall be accepted under the Regulations/Policy Decisions. However, Medical Fitness Certificate issued within three (03) months prior to the closing date of the Advertisement shall be acceptable subject to the condition that the candidate fulfills all other requirements of Physical Standards prescribed for the post. Medical Certificate issued after the closing date and revision in Physical Standards after the closing dates shall not be accepted. Tempered Medical Certificate is not acceptable.”

7. The fact that a candidate is required to take medical examination at the time of submission of his application cannot be treated as conclusive determination and declaration of his medical fitness in terms of applicable rules (i.e., Rule 12.15) inasmuch as the medical certificate in terms of the advertisement is for the purpose of

screening at initial stage and to avoid unwarranted progression of unfit candidates. It is an expedient approach inasmuch as against limited number of posts of Sub-Inspectors and Inspectors, thousands of applications are submitted, and it is not feasible as also practicable for the department to conduct medical examination in terms of Rule 12.16 of the Police Rules through the Civil Surgeon. Once a person clears written examination, as also interview on the basis of which he is offered appointment subject to satisfying the mandate of Rule 12.16, which is precursor to the declaration of enrolment. No claim to recruitment could be made on the basis of initial-cum-preliminary medical examination. It is after the enrolment that vested rights are created and can be claimed by the medically fit candidate, in the context of mandate of Rule 12.16. Once comprehensive medical examination, in terms of Rule 12.16 of the Police Rules, has been carried out and fitness was certified accordingly, only then any subsequent/second height measurement, let alone medical examination cannot be carried out, which is not the case pleaded by the respondent before us.

8. The requirement of medical examination for measurement of height at the time of enrolment as Sub-Inspector, after the offer of appointment is made, cannot be equated with the result of medical examination required at the time of submission of applications, in terms of the advertisement. We are of the view that the Police Rules stipulate the height requirements, as also the conduct of medical examination at the time of enrolment of a selected candidate and, therefore, the medical examination got conducted by the candidate in order to process his application, in terms of the advertisement, cannot be accorded precedence over the mandate of Rule 12.16 of the Police Rules. The advertisement is one of the steps and/or subsets of the overall scheme of appointment envisaged under the law and it belies logic if subset of the process is permitted to attain primacy over the

entire scheme envisaged under the Police Rules itself. The appointment/enrolment of any candidate as Sub-Inspector was subject to the medical certificate issued in terms of Rule 12.16 of the Police Rules which aspect has not been considered in cases of Huma Hameed supra and Muhammad Masoom supra relied upon by learned counsel for the respondent. Conclusiveness of declaration of medical fitness before recognizing and confirming candidate's enrolment, in terms of Rule 12.16, was affirmed through a reported judgment, of a Full Bench of this Court, dated 16.05.2024 in case bearing I.C.A No.37/2022 titled "Government of the Punjab etc. v. Muhammad Ahmad (2024 LHC 2683)", in which case vision impairment was the disability in the context of appointment of Sub-Inspector. It has been held as under:

"In view of the 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."

9. In view of the above discussion, this ICA is allowed and impugned judgment dated 12.06.2024 passed by the learned Judge-in-Chambers in W.P No.3085/2023 is set aside. As a natural corollary, the constitutional petition filed by the respondent is dismissed.

(ASIM HAFEEZ)
Judge

(ANWAAR HUSSAIN)
Judge

Approved for reporting

Judge

Judge