

Stereo. H C J D A 38.

JUDGMENT SHEET

LAHORE HIGH COURT LAHORE

JUDICIAL DEPARTMENT

Writ Petition No.59263 of 2022

Akash Masih Versus Senior Superintendent of Police, etc.

J U D G M E N T

Date of Hearing:	12.10.2023
Petitioner by:	Mr. Muhammad Talha Mushtaq, Advocate. Mr. Muhammad Sajjad Zaidi, Advocate. Mr. Khawar Shabbir Khan, Advocate.
Respondents by:	Mr. Imran Khan, Assistant Advocate General. Muhammad Nawaz, DSP, Office of CPO, Gujranwala. Shabbir, Inspector, Office of DPO, Gujranwala. Ali Shan, S.I., Office of CPO, Gujranwala.

Anwaar Hussain, J. By way of factual background, it has been noted that in response to an advertisement published by the Police Department regarding the appointment to the post of Constable in District Gujranwala (“**Police Department**”), the petitioner applied for the said post, *vide* application Form No.1837, and successfully completed all formalities, however, the appointment was refused on the ground that, subsequent to the submission of his application, an FIR bearing No.68/2021, dated 11.01.2021, under Sections 427/182 of Pakistan Penal Code, 1860 (“**the PPC**”) and 29-D of the Telegraph Act, 1885 was found to be registered against him at Police Station Sadar, Gujranwala.

2. The petitioner approached this Court through a constitutional petition bearing W.P. No.49792/2022 while laying challenge to

rejection of his application in which the Police Department submitted a report, perusal whereof depicts that the petitioner has been refused appointment on the strength of Standing Order No.06/2015 dated 09.07.2015 (“**Standing Order**”), which contemplates that a candidate having criminal record shall not be appointed. In the said round of litigation, the petitioner produced an order dated 03.06.2021 passed by the learned Judicial Magistrate, Gujranwala whereby the petitioner was convicted and was placed on probation for a period of one year and it was specifically observed that the petitioner shall not be disqualified for any Government job or appointment in future. The rejection order was set aside by this Court and the matter was remitted to the Police Department for re-examination, keeping in view the finding of the learned Judicial Magistrate recorded in order dated 03.06.2021 as well as the object of the Probation of Offenders Ordinance, 1960 (“**the Ordinance**”). Upon re-consideration, the Police Department has passed the impugned order dated 19.09.2022 whereby the representation of the petitioner has been turned down on the strength of the Standing Order.

3. M/s Muhammad Talha Mushtaq, Muhammad Sajjad Zaidi and Khawar Shabbir Khan, Advocates, learned counsel for the petitioner submit that, while passing the impugned order, the object of the Ordinance has not been considered, purpose whereof is to provide an opportunity to the individuals, like the petitioner who are not hardened criminals, to reform themselves and, in this regard, places reliance upon case reported as “*Inspector-General of Police Punjab, Lahore and others v. Mahmood Ikram*” (1998 SCMR 765). Reliance has also been placed upon the reported judgment of this Court, dated 12.09.2023, passed in W.P. No.50582 of 2022 titled “*Syed Ali Hassan Naqvi v. Senior Superintendent of Police, etc.*”, (2023 LHC 4701) in which the Standing Order came under discussion and the

said petition was allowed, with the averments that the same is applicable to the present case on all fours.

4. Conversely, Mr. Imran Khan, Assistant Advocate General submits that the case of the petitioner is distinguishable from that of Syed Ali Hassan Naqvi supra, inasmuch as, this Court has not struck down the departmental policy envisaged under the Standing Order rather has affirmed the same. He further contends that the facts of the present case are distinguishable from case of Syed Ali Hassan Naqvi supra. Elaborating his stance, learned Law Officer submits that in the said case, the petitioner therein was acquitted on merits by the learned Trial Court in a case registered against the said petitioner, whereas in the instant case, the petitioner, having been nominated in the FIR registered against him after submission of the application, confessed his crime and was accordingly convicted. Therefore, his candidature has been rightly rejected by the Police Department. Concludes that in case of Syed Ali Hassan Naqvi supra, this Court has held that opinion of the Investigating Agency should not be given preference over the acquittal on merits by the Court of competent jurisdiction, whereas, in the instant case, there is no acquittal rather the petitioner was set free on parole under the Ordinance after he confessed his guilt.

5. Arguments heard. Record perused.

6. This Court has already expressed its opinion as regards the scope of Standing Order in case of Syed Ali Hassan Naqvi supra and while reading down the applicable policy of the Police Department, envisaged thereunder, this Court held that the opinion of the Investigating Officer cannot be given preference over the judicial findings of acquittal of an accused applicant on the merits of the case. However, before rendering opinion in the instant case, it will be in fitness of things to reproduce relevant part of the instructions dated

29.07.2022, admittedly forming part of the Standing Order 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 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 forms 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)

7. This Court in case of *Syed Ali Hassan Naqvi supra* observed as under:

“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.”

8. It is clear that this Court in case of Syed Ali Hassan Naqvi *supra* read down the Standing Order in the manner that if the acquittal by the judicial limb of the State is on merit, a candidate should not be non-suited on the basis of the opinion of the investigating agency. While reading down the Standing Order in the stated manner, this Court was conscious of the balance required to be struck between the two opposite spectrums i.e., right of a citizen to join profession and/or calling of one's own choice and to be dealt with in accordance with law on the one end and the public policy to maintain the police as a disciplined force by not recruiting those who possess criminal antecedents on the other. Therefore, this Court in case of Syed Ali Hassan Naqvi *supra* has not ruled that the candidates who have been guilty and/or convicted on the basis of confession or otherwise are entitled to the recruitment in the Police Department.

9. Moreover, it needs reiteration as well as elucidation that this Court saved the Standing Order in case of Syed Ali Hassan Naqvi *supra* by extending deference to the departmental policy incorporated therein by reading it down in the manner that acquittal by the Court of competent jurisdiction, on merits, cannot be overridden by the findings of the investigating officer as was the situation in Syed Ali Hassan Naqvi case and this aspect gets support from part IV of the Standing Order quoted hereinabove. Thus, the Standing Order, as a departmental policy, holds the field which is required to be given due deference unless found to be perverse and violative of the fundamental rights.

10. Above discussion also entails the question whether a departmental policy, like the Standing Order, can be nullified or made redundant by the observations made by a Judicial Magistrate while releasing the accused/petitioner on parole after his confession with the observation that this conviction shall not have any impact on

the appointment to any government job in the future without looking into the nature of the policy(ies) of a particular department. This Court finds it hard to align itself to such a view. Even this Court in Constitutional jurisdiction cannot sit over the wisdom of the department reflected in a policy unless the same is found to be violative of fundamental rights or based on *mala fide* as observed hereinabove. In addition, such an observation may hold some persuasion in any other department but not in police force. Standard expected of a person intending to join a uniformed service like the Police Department is quite distinct, from other services, which is required to be more disciplined institution and inclusion of person having criminal antecedents could have bearing on the discipline of the force that is tasked to maintain law and order in the society.

11. Moreover, besides the lack of jurisdiction of judicial magistrate to nullify or make redundant the policy of the Police Department, there is another aspect of the matter from which this case can be examined. In the instant case, the learned judicial magistrate has made observations that sending the petitioner on parole would have no bearing on his recruitment to any department in future whereas there is possibility that some other judicial magistrate in such like case(s) may not make any such observations with respect to some other applicant. This would engender a discrimination of its own kind having no lawful justification and possibility thereof cannot be ruled out. This also necessitates that in such eventualities it is left to the Police Department to scrutinize the cases of candidates, on individual basis, in accordance with its policy, envisaged under the Standing Order, without any discrimination.

12. Learned counsel for the petitioner argued with full vigour and vitality that under Section 11 of the Ordinance, the conviction and release on probation does not have any bearing on eligibility of the

petitioner to the post of Constable and placed reliance on case of Inspector General of Police, Punjab supra. Therefore, it would be convenient to have a look at Section 11 of the Ordinance in general and its sub-section (2) in particular, which is reproduced as under:

“11. Effects of discharge and probation.—

(1) A conviction of an offence, for which an order is made under section 4 or section 5 for discharging the offender after the due admonition or conditionally or placing him on probation, shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the provisions of this Ordinance: Provided that where an offender, being not less than eighteen years of age at the time of his conviction of an offence for which an order discharging him conditionally or placing him on probation is made, is subsequently sentenced under this Ordinance for that offence, the provisions of this sub-section shall cease to apply to the conviction.

(2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is discharged after due admonition or conditionally, or who is placed on probation, shall in any event be disregarded for the purposes of any law which imposes any disqualification or disability upon convicted persons, or authorizes or requires the imposition of any such disqualification or disability.”

This provision has been interpreted by the Supreme Court of Pakistan in case of Inspector General of Police, Punjab supra wherein it has been observed as under:

“14.....Bare perusal, disclose that disqualification or disability mentioned therein is not directly relateable to conviction for an offence wherein offender has been granted probation but contemplates any disqualification or disability specifically provided or something attached to such law which should be ignored while applying abovereferred provisions of the Ordinance. Therefore, for all practical purposes the facility of probation does not altogether obliterate the

conviction, but eliminates its impact by lifting away disqualification attached to any other law.”

After scanning catena of judgments on the object and scope of the Ordinance, the Supreme Court conclusively held as under:-

“19. On considering the principle of law discussed above, we feel inclined to hold that by virtue of section 11(2) Probation of Offenders Ordinance, 1960, the offender gets an opportunity of rehabilitation in the society without stigma of conviction provided the offence is not repeated and terms of bond furnished by him for good conduct and peace are honoured till stipulated period; nevertheless in case of Government servant without prejudice to benefit available under aforesaid enactment, the Departmental Authority is not precluded from initiating action for misconduct under relevant Efficiency and Discipline Rules.”

(Emphasis supplied)

It is well evident from the above that in case of Inspector General of Police Punjab, *supra* the appeal of the Police Department was accepted and the department was held to be not precluded to proceed against the delinquent serving Police Officer even after his Probation under the Ordinance. Therefore, if the Police Department was allowed to proceed on account of misconduct in respect of a serving Police official under the applicable service rules, it cannot be construed that the Police Department, on the same analogy, cannot reject the candidature of an applicant on the basis of departmental policy envisaged under the Standing Order.

13. Even otherwise and without prejudice to the above, if the contention and reliance of the counsel of the petitioner on case of Inspector General of Police Punjab, *supra* is considered the way the counsel of the petitioner pleaded and wants this Court to read, even then the same is of no help to the petitioner as the Standing Order was not in field at the time when the decision was rendered in referred case and never came under discussion before the Supreme

W.P. No.59263/2022

Court of Pakistan. Hence, the reliance is misplaced on this ground as well.

14. In view of the above discussion, this Court is of the opinion that the present petition has no merit and hence, **dismissed.**

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Maqsood