

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Hasan Azhar Rizvi
Ms. Justice Musarrat Hilali
Mr. Justice Naeem Akhtar Afghan

Civil Appeal No. 928 of 2020 and
CMA No.500-K of 2023 in CA No.928 of 2020

[Against Judgment dated 17.12.2019 passed by High Court of Sindh, Karachi in C.P.No.
D-4329 OF 2019]

Province of Sindh and others.

...Appellant(s)

Versus

Muhammad Tahir Khan Chandio and others.

...Respondent(s)

For the Appellant(s) : Mr. Sibtain Mehmood, Additional
Advocate General Sindh *at Islamabad.*
Ghulam Rasool Mangi, AOR *at Islamabad.*
Adil Memon, AIG Legal
Pir Muhammad Shah, DIG
Establishment
(via video link from Karachi)

For the Respondent(s) : Malik Naeem Iqbal, ASC

For the Applicant(s) : Mr. Abid Shahid Zuberi, ASC
(in CMA 500-K/2023) (via video link from Karachi)

Date of Hearing : 15.04.2024

JUDGMENT

Syed Hasan Azhar Rizvi, J.

C.M.A.No. 548-K of 2021:

Through this application, the applicants/interveners seek their impleadment being a necessary/proper party to the *lis* in hand on the ground that the impugned judgment has adversely affected their rights and principle of *audi alteram partem* was not followed by the learned High Court. Learned Additional Advocate General, Sindh and learned counsel for the respondents have no objection in this regard.

For the reasons mentioned therein, the same is allowed and the applicants are allowed to be arrayed as party. Learned

Additional Advocate General Sindh undertakes to file amended title. Order accordingly.

Main Appeal:

2. Through this appeal, by leave of the Court, the appellants have called in question the judgment dated 11.03.2020, passed by the High Court of Sindh, Karachi whereby constitution petition filed by the respondents was allowed.

3. Leave was granted by this Court *vide* order dated 26.10.2020 in the following terms:-

*"The learned Additional Advocate General, Sindh points out that in the very judgment of this Court reported as Gul Hassan Jatoi and others vs. Faqir Muhammad Jatoi and others (2016 SCMR 1254), this Court has observed that there can be employees in the police department who are non-uniform like ministerial staff and/or IT department but they are recruited and regulated by the Sindh Civil Servants Act, 1973 (**the Act**) and the rules framed thereunder (**the Rules**). He further contends that the Police Act, 1861 so also the rules made thereunder have no application to the appointment of ministerial staff and/or IT department as their cadre is altogether different, rather they are regulated by the Act and the Rules, and thus, in the impugned judgment, the High Court has altogether did not rely upon the judgment of this Court by merely saying the same to be obiter dicta.*

2. Submissions made require consideration. Leave to appeal is granted to consider, inter alia, the same. . . ."

4. Mr. Sibtain Mehmood, the learned Additional Advocate General, Sindh for the appellants submits that the impugned judgment has been passed without taking into consideration the applicable rules and regulations thereby the newly impleaded respondents and 500 persons were appointed on the civilian posts of I.T. Cadre in the Police Department, thus not sustainable in the eyes of law and that the High Court while delivering the impugned judgment has not applied its judicious mind.

5. Malik Naeem Iqbal, learned counsel for the respondents states that an advertisement was issued for the recruitment of candidates for the post of ASI (Computer) and pursuant thereto, 113 individuals were appointed in 2004, however all the ASIs (Computer) were not assigned any computer related work, rather they served in the Executive Branch of the police and were also given appropriate training by the police department; that some of them have embraced martyrdom; most of the ASIs have dealt with a number of criminal cases independently and out of 113 ASIs, presently 65 are in service.

6. The learned counsel for the respondents has referred to an order passed by a Division Bench of this Court on 16.03.2021 in Civil Review Petitions No.2-K to 11-K of 2021, wherein it was observed as under: -

"The petitioners were appointed in the Technical Cadre of Police Department and subsequently absorbed in the Executive Cadre where they served for almost two decades. Now the learned Additional Advocate General seeks to transfer them back to their original Cadre. When confronted, the learned Addl.A.G. has not been able to satisfy us as to how their transfer back to the original cadre is useful after a lapse of almost twenty years. We consider that it would neither be useful for the Cadre from which they were transferred nor the Executive Branch where they served for more than two decades. We have rightly held in our order under review dated 10.09.2020 that no case of public importance in terms of Article 212(3) of the Constitution is made out. These review petitions are accordingly dismissed."

7. The learned counsel for the respondents submits that in terms of principles of law enunciated by this Court in the case of Gul Hassan Jatoi and others vs. Faqir Muhammad Jatoi and others (2016 SCMR 1254) in paragraphs No.54 and 67, wherein it was held that cadre of subordinate police officials could only be

determined on the basis of their recruitment process, training and experience during service. He further states that the respondents were appointed in 2004 by adopting the recruitment process as ASIs Police, underwent training of ASI courses, obtained practical training (A,B,C,D Courses), as are imparted to ASIs of Executive Police. The respondents as per the learned counsel be treated at par with ASIs Executive Police keeping in view their experience of more than twenty (20) years while performing their duties as ASIs Executive.

8. Learned counsel for the respondents contends that an appeal was filed before the Sindh Service Tribunal at Karachi wherein the issue involved relates to the appointments in the IT Cadre of Sindh Police. Certified photocopy of the judgment passed by the Tribunal on 22.05.2015 is enclosed and available at page-60 of the paper-book. In paragraph No.19 at page-86 of the paper book, directions were issued to the Police Department to constitute a committee *qua* appointments in the IT Cadre of the Police and creation of the IT Cadre in the Police Department within a period of one month.

9. The learned Additional Advocate General Sindh states that in compliance with the said order relevant rules were framed, as per recommendation of the committee and an advertisement dated 29.04.2019 was issued for the appointments of the different officials on civilian posts of IT Cadre in Police Department. Including the applicants/interveners about 500 persons were appointed pursuant to the said advertisement. Some of the persons so appointed have filed application for impleadment as necessary party to the case in hand. They were appointed in accordance with law in IT Cadre against the posts mentioned in the advertisement

dated 29.04.2019 available at page-224 of the paper book, those are Computer Operator, Senior Data Entry Operator/Key Punch Operator, Surveillance Operator, Electric Supervisor, Technical Supervisor, Call Centre Operator, Data Entry Operator, Hardware Technician.

10. Mr. Abid S. Zuberi, learned ASC has argued that the newly added respondents (who are referred to above) were not impleaded as a party to the proceedings before the High Court and they were condemned unheard and adverse observations were passed against them in the impugned judgment, particularly, in paragraph Nos. 17, 18, 19 thereof.

11. Being a valid ground that the adverse observations so made as referred to above will affect the rights of the newly impleaded respondents, therefore, the same are hereby set aside/expunged.

12. We observe that 65 ASIs including the respondents who were appointed as ASI (Computer) in 2004 and filed the petition before the High Court shall continue to perform their service in the Executive Branch of the Police Department but this practice shall not be cited as a precedent in future. However, their seniority and promotion shall be dealt with strictly in accordance with law, rules and regulations.

13. This appeal along with pending applications is disposed of in the above terms.