

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

CIVIL PETITIONS NO.499-K AND 519-K OF 2023

(Against the order dated 27.02.2023, passed by the Sindh Service Tribunal, Karachi in Appeals No.454 and 455 of 2020)

Javed Ali (in CP No.499-K/23)
Sabir Ali (in CP No.519-K/23)
...Petitioners

Versus

Inspector General of Police, Sindh & others ...Respondents

For the Petitioners : In-person
(both cases)

For the Respondents : Mr. Sibtain Mehmood, Additional Advocate General, Sindh
Mushtaq Ahmed Abbasi, AIG (Legal)
Muhammad Ghaffar, DSP Legal
Nawaz Ali, DSP Legal, Benazirabad

Date of Hearing : 06.08.2024

Judgment

Muhammad Ali Mazhar, J. These Civil Petitions for leave to appeal are directed against the consolidated order dated 27.02.2023, passed by the Sindh Service Tribunal, Karachi ("**Tribunal**") whereby Appeals No.454 and 455 of 2020 filed by the petitioners were dismissed and departmental action was maintained.

2. According to the chronicles of the case, both petitioners applied for the vacancy of Police Constable, District Benazirabad, announced pursuant to a publication made in newspapers. After fulfilling all requisite formalities, the petitioners were declared successful and referred to the Medical Superintendent, Peoples Medical College and Hospital, Nawabshah, for examining their fitness for the job. After scrutinizing the credentials and

completing the codal formalities, both petitioners, Sabir Ali and Javed Ali, were appointed as Police Constables *vide* Appointment Orders dated 10.07.2012 and 09.07.2014, respectively. However, in the month of March 2019, the petitioners were surprisingly served orders of dismissal from service on the allegations that they were overage at the time of appointment. Though they were served show cause notices but no right of personal hearing was afforded before passing the dismissal orders. After filing departmental appeals, the petitioners approached the learned Tribunal, but *vide* the impugned order, the appeals were dismissed.

3. The petitioners, in person, addressed that they were dismissed from service without being afforded any right of personal hearing and regular inquiry. They further argued that many other similarly placed employees were reinstated by the department whereas their case is on a better footing since they served for a considerable period and their appointment was not forged or fake, but all codal formalities were complied with. They further argued that this important aspect was ignored by the learned Tribunal and the petitioners were non-suited on the technicalities rather than advertent to the merits of the case and the discrimination meted out to the petitioners has caused a serious miscarriage of justice.

4. The learned Additional Advocate General, Sindh ("**A.A.G.**"), argued that according to the report submitted by the department, both the petitioners, Sabir Ali and Javed Ali were overage by 25 days and 62 days respectively. He further argued that certain directions were issued by this Court in HRC No.16082-S of 2015 to conduct an inquiry with regards to the fake and illegal appointments made in the Police service during the years 2012 to 2015. According to him, the committee identified irregularities in the recruitment process from 2012 to 2015 and declared 68 Police Constables (male/female) unfit in various categories, having been appointed through improper means. He reiterated that both the petitioners were overage, hence disciplinary action was rightly taken against them by the department.

5. Heard the arguments. A show cause notice was issued to the petitioner Sabir Ali on 29.06.2018 wherein it was alleged that it

was clearly mentioned in the advertisement that only candidates being between 18 to 28 years of age should have applied for recruitment as Constable, but despite being overage, he applied for recruitment and qualified the prescribed recruitment process with ill tactics. Whereas another petitioner, Javed Ali, was included in the joint show cause notice dated 29.08.2018 issued to 11 employees on similar allegations. However, it is an admitted fact that neither any right of personal hearing was afforded nor was any inquiry conducted to prove whether the petitioners secured their appointments lawfully or unlawfully or in a deceitful manner, and whether they were solely responsible without any lapses or slip-ups of the personnel deployed in the recruitment process. Moreover, a specific plea was taken by the petitioners before the learned Tribunal that their similarly placed colleagues were reinstated afterwards, but this benefit was not afforded to the petitioners who have been discriminated against. Neither this vital contention was appreciated nor the respondents were called upon to verify or comment on it to dislodge or disentangle the plea of discrimination, as according to the petitioners the subsequent representation or mercy petitions were filed only with the hope that, since other similarly placed employees have been accommodated after dismissal from service, therefore, the petitioners preferred mercy petitions with the expectation and confidence that the same treatment would be granted to them but this crucial aspect was not taken into consideration by the learned Tribunal while non-suiting the petitioners.

6. The petitioners further articulated that at the time of submitting their applications and appearing for tests, no such ground was ever raised by the department, nor were they confronted with the issue of being overage. What we have perceived from the record is that the petitioners were not appointed through any illegal or fake recruitment process, rather there was an issue of being overage, which was intimated to them after about 4 to 6 years from the date of their induction in service and they have been made the victim of this overage issue without being intimated of any such defect at the time of applying for the job, and after serving 4 and 6 years in the Police Department, the drastic action of dismissal from service

was taken without giving any opportunity of personal hearing and conducting enquiry. There is nothing on record with regards to the present petitioners which may show that the petitioners managed their appointment through some illegal means or committed any fraud. The distress of unemployment is rampant at a large scale in the society, therefore it necessitated the department's consideration of whether the petitioners' overage by 25 days and 62 days, respectively, and their submission of job applications in hopes of receiving age relaxation, was based on *mala fide* or *bona fide* intention. One more crucial aspect that needed to be examined by the department was the age of the petitioners at the time of submitting their job applications. Sometimes, the process of recruitment is delayed for an inordinate period due to which some candidates might have crossed the age at the time of appointment but they remained in the age bracket at the time of submitting job applications. What would be the effect in this scenario? Will the period of delay and/or lapses in the completion of recruitment process be attributed to the candidate or the department? A commonsensical approach is to consider the date of birth of a candidate at the time of submitting the job application according to job qualifications mentioned in the advertisement. What is more, according to the petitioners, there is also a conflict and disagreement on the exact age of the petitioners at the time of making application for joining the recruitment process and the age intimated by the learned A.A.G. during the course of arguments which also needs to be resolved. Furthermore, while dismissing the petitioners from service after they served a considerable length of service, the department also failed to advert to the possibility of age relaxation, if any, available under the law, in view of Government Policy or Notification in vogue for any ex-post facto approval.

7. Due diligence in human resource is an all-encompassing procedure for systematically assessing the qualifications and fitness of the candidates in the organization, so the recruitment process should ensure that the recruitment is based on truthful data and the applicant fulfils the criteria required for the post, including the credentials, verification of qualification, and relevant experience, if any. A standardized assessment procedure of job

applications not only safeguards the fairness and objectivity but also relegates the menace of bias and discrimination in the appointment process. The blunders in the recruitment process always have negative and deleterious impact on any organization as a whole. It is a serious business, which cannot be achieved in a slipshod or perfunctory manner. By and large, the recruitment process is triggered through public announcement/advertisements in the vernacular newspapers along with all requisite details of vacant situations and required qualifications for the post or posts so that the interested candidates may apply to join the competitive process. The primary footstep is always submitting an application with all antecedents/credentials including the qualifications required for the post. The process of shortlisting or screening the job applications is not a unique idea but it is a very common process which is put into action by the administration department or human resource department of any organization in order to scrutinize each application diligently to satisfy whether the application fulfils all requisite qualifications or not. In case of any lapses, the applicant may be called upon to correct the omissions or defects and in case the application is not found commensurate to the terms and conditions mentioned in the advertisement for applying the job by the candidate, then it is better to reject it at the initial stage rather than camouflaging it or keeping it under wraps intentionally or unintentionally or due to some recklessness. In the case in hand, after serving for a considerable period of appointment made after a lengthy procedure, the petitioners were called upon to explain why they applied for the job when they were overage, but there was no explanation by the department as to why their own recruitment procedure was so weak and vulnerable that it detected such flaw or deficiency after 4 to 6 years. Why were the applications of the petitioners not scrutinized or vetted at the time of submissions, as should have been done as part of due diligence to identify any misrepresentation of qualifications or any other defects in the application? It is therefore essential that recruiters should verify the details of job applicants prior to making a job offer and the ideal approach is to undertake all verifications, screening, and requisite formalities before allowing the employee to commence work. This should be a matter of grave concern for the

police department that due to serious mistakes and lapses committed by the persons deployed in the recruitment process, such severe complications are cropped up subsequently which spoils the credibility and uprightness of the entire course of action. When we confronted the learned A.A.G. and the officials present in Court as to why at the time of submitting application forms, the competent authority failed to examine the particulars, including the factum of age, neither any plausible justification was provided, nor did they communicate us what penal action, if any, was initiated against the persons involved in the alleged sham recruitment process.

8. The petitioners were awarded the major penalty of dismissal from service without any individual departmental inquiry and affording any right of audience. In unison, the petitioners also claimed that various similarly placed employees were reinstated which became the cause of instituting the mercy petitions. All these crucial contentions of whether in the peculiar circumstances of the case, the inquiry could be dispensed with or not; the effect of reinstatement of other dismissed employees, if any; and non-providing the right of personal hearing, are required to be considered meticulously by the learned Tribunal being a first judicial fact-finding forum in the case which could not be decided in a summary manner.

9. In the wake of the above discussion, these petitions are converted into appeals and allowed. As a consequence, thereof, the impugned order is set aside and the matter is remanded to the learned Tribunal to decide the appeals on merits after providing equal opportunity of hearing to the parties.

JUDGE

JUDGE

Karachi
06.08.2024
Approved for reporting
Rabbani

