

2024 P L C (C.S.) 826**[Lahore High Court]****Before Shahid Jamil Khan, J****Syed ALI RAZA NAQVI and others****Versus****CHAIRMAN PPSC and others**

Writ Petition No.43082 of 2023, decided on 17th October, 2023.

Constitution of Pakistan---

----Arts. 18, 25 & 27---General Clauses Act (X of 1897), S. 24-A---Police service, recruitment in---Appointment letters, non-issuance of---Candidates with criminal record subsequently exonerated, due to absence of evidence---Rule thumb principle law laid down by the Supreme Court of Pakistan in the case reported as Faraz Naveed v. District Police Officer Gujrat and another (2022 SCMR 1770) [the Faraz Naveed case]---Petitioners invoked constitutional jurisdiction of the High Court being aggrieved of non-issuance of appointment letters despite recommendations by Punjab Public Service Commission (PPSC)---Contention of the respondent / CCPO was that the acquittal of petitioners was due to absence of evidence, therefore, petitioners could not be appointed---Plea of the respondents (Police Department) was that candidates having criminal record or affiliation with any proscribed organization could not be appointed while placing reliance on the Faraz Naveed case---Validity---Record (including reply by respondents) did not show that, in the present case, the parameters and dictum laid down in the Faraz Naveed Case had not been followed while declining the appointment letter---Said judgment (Faraz Naveed Case) required the relevant Authority to form an opinion fairly and equitably that despite exoneration the criminal record suggested that the candidate was a constant threat to the discipline of the police force, police confidence and might demoralize and undermine the environment in department etc.---Said judgment (Faraz Naveed Case) did not support the rule of thumb that in presence of an FIR, even after acquittal the successful candidate recommended by PPSC would be refused appointment letter---Rule of thumb is not even supported by the Standing Order No.6 of 2015 issued by IG Police, Punjab which envisages "candidates having criminal record"---Term "criminal record", denotes a consistent involvement in criminal activities---Such exercise of discretion is declared against the spirit of the judgment in Faraz Naveed Case and violative of S. 24-A of General Clauses Act, 1897---Discretion cannot be exercised in mechanical way, when future of a citizen is at stake---Petitioners, being citizens, have fundamental right under Arts. 18 & 25 of the Constitution against discrimination and for choice of occupation and profession---In particular under Art. 27 of the Constitution, a person qualified for appointment is protected from any discrimination, which includes denial for appointment on conjectures and surmises---For having an opinion on the criminal record, the Authority must disclose the reasons, as envisaged in Faraz Naveed Case (supra), based on material gathered from Special Branch or concerned Police Station---Rule of thumb followed by the respondents to refuse appointment

was declared ultra vires of the Constitution---Admittedly, the petitioners were named in the FIRs arising out of some family dispute---No evidence or information of their other criminal record was available---Acquittal for no evidence meant that the allegation in FIR was false---Any law abiding citizen, by fate, can be entangled in any criminal case, therefore, his future and fundamental rights under the Constitution cannot be compromised by a rule of thumb---Respondent/ CCPO was directed to issue appointment letters to the petitioners---Constitution petition was allowed, in circumstances.

Faraz Naveed v. District Police Officer Gujrat and another 2022 SCMR 1770 ref.

Muhammad Shabbir Hussain, Muhammad Adnan Afzal, Rana Razaqat Ali, Mehar Ahsan Javed and Usman Haider Toor for Petitioners.

Waseem Majeed Malik, Additional Advocate General, Punjab for Respondents.

Ijaz Ahmad Awan, Law Officer, PPSC.

Javed Dogar, DSP/Legal, Capital City Policy Officer.

Date of hearing: 17th October, 2023.

JUDGMENT

SHAHID JAMIL KHAN, J.---Petitioners are aggrieved of non-issuance of appointment letters despite recommendations (Annex-B) by Punjab Public Service Commission ("PPSC"), where petitioners are appearing at Serial Nos. 18 and 75 respectively.

Learned counsel for the petitioners submitted that they were informed verbally about non-issuance of appointment letters due to criminal cases, in which petitioners have already been acquitted. Contended that as per respondent No.4/CCPO, the acquittal is in absence of evidence, therefore, petitioners cannot be appointed.

Learned counsel for the petitioners has placed reliance on number of judgments i.e Muhammad Ayaz Khan v. Government of Sindh and others (2007 PLC (C.S) 716), Dr. Abid Ali and 5 others v. Government of Khyber Pakhtunkhwa through Secretary, Health Peshawar and 3 others (2014 YLR 1322), Inamullah v. Government of Khyber Pakhtunkhwa through Chief Secretary and 3 others (2017 PLC (C.S.) 926), Waseem Yaqoob v. Government of Punjab and others (2018 PLC (C.S) 454), Abdus Salam v. Inspector General of Police, Punjab and 2 others (2019 PLC (C.S.) 503), Attaullah Sheikh v. WAPDA and others (2001 SCMR 269) and Mumtaz Ali Shah v. Chairman, Pakistan Telecommunication Company Ltd., H.Q., Islamabad and 6 others (PLD 2002 SC 1060).

2. Learned Additional Advocate General assisted by DSP Legal submits that in presence of criminal record the respondents have discretion to refuse appointment letter despite recommendation by PPSC. He has placed reliance on paragraph No.23 of Standing Order No.6 of 2015 issued by Inspector General of Police, Punjab, relevant part of which is reproduced:-

"BACKGROUND INVESTIGATION:

The District Police Officer, shall send the requisite information of the successful candidates to the Addl. Inspector General of Police, Special Branch and also to the concerned Police Station of the District where the candidate resides.

The two offices i.e. Addl. IGP Special Branch and District Police Officer concerned shall put every effort to verify the personal character, academic certificates and other relevant facts of the successful candidates.

The verification reports shall be minutely scrutinized by the DPO before issuing appointment letter.

Candidates having criminal record or affiliation with any prescribed organization shall not be appointed."

[Emphasis supplied]

He has also placed reliance on judgment by the Apex Court in Faraz Naveed v. District Police Officer Gujrat and another (2022 SCMR 1770) and has read paragraph No.17 of the judgment, which is reproduced:-

"17. The police force is a disciplined force with cumbersome accountability and responsibility of maintaining law and public order in the society and populace, therefore, any person who wants to be part of the disciplined force should be a person of utmost integrity and uprightness with unimpeachable/spotless character and clean antecedents. Despite acquittal, it is the privilege and prerogative of the employer which is in this case "Punjab Police Force". So, it is for the department to examine fairly and equitable whether the petitioner has been completely exonerated or not and his further induction may not become a constant threat to the discipline of the police force and public confidence and may also not demoralize and undermine the environment and frame of mind of the upright and righteous members of the force, therefore, a person having criminal antecedents would not be fit to be restored or reinstated to his previous position or post."

[Emphasis supplied]

Submits that petitioners' name in the FIRs falls within the mischief of criminal record, therefore, following the rule of thumb and in the light of judgment, *ibid*, the appointment letters are not being issued.

Learned AAG has not denied that petitioners are named in the FIRs arising out of some family disputes. It is also not denied that petitioners have successfully qualified the process and recommendations for their appointment have been made by PPSC.

3. Heard. Record Perused.

4. Perusal of the reply by respondents and assistance by learned A.A.G. does not show that the parameters and dictum laid down by August Supreme Court has been followed while declining the appointment letter.

The judgment in Faraz Naveed Case (*supra*) required the relevant authority to form an opinion fairly and equitably that despite exoneration the criminal record

suggests that the candidate is a constant threat to the discipline of the police force, police confidence and may demoralize and undermine the environment in department etc. The judgment does not support the rule of thumb that in presence of an FIR, even after acquittal the successful candidate recommended by PPSC shall be refused appointment letter. The rule of thumb is not even supported by the Standing Order No.6 of 2015 which envisages "candidates having criminal record". The term "criminal record", denotes a consistent involvement in criminal activities.

This exercise of discretion is declared against the spirit of the judgment in Faraz Naveed Case (supra) and violative of Section 24-A of General Clauses Act, 1897. The discretion cannot be exercised in mechanical way, when future of a citizen is at stake. The petitioners, being citizens, have constitutional and fundamental right under Articles 18 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution") against discrimination and for choice of occupation and profession. In particular under Article 27 of the Constitution, a person qualified for appointment is protected from any discrimination, which in this Court's opinion, includes denial for appointment on conjectures and surmises. For having a criminal record opinion, the authority must disclose the reasons, as envisaged in Faraz Naveed Case (supra), based on material gathered from Special Branch or concerned Police Station. The rule of thumb followed by the respondents to refuse appointment is declared ultra-vires of the Constitution.

Admittedly, the petitioners were named in the FIRs arising out of some family dispute. No evidence or information of their other criminal record is available. Acquittal for no evidence means that the allegation in FIR was false. Any law abiding citizen, by fate, can be entangled in any criminal case, therefore, his future and fundamental rights under the Constitution cannot be compromised by a rule of thumb.

5. The petition is allowed. Respondent No.4 is directed to issue appointment letters to the petitioners in absence of any adverse opinion in light of the judgment in Faraz Naveed Case (supra).

MQ/A-62/L Petition allowed.

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