



advertisement on 04.01.2016, the Petitioners applied for the appointment of the Police Constables in Police Respond Unit (**PRU**) in the Punjab Police, Lahore. The Petitioners in the Petitions after passing the physical examination test appeared in the NTS test on 17.04.2016 and were declared successful candidates. After shortlisting the candidates, however, the names of the Petitioners were put in the waiting list. On 23.08.2016, the Petitioners received a message on their mobiles from the Office of the Respondent No. 3 stating that "*Dears PRU Candidates your revised interview for dolphin squad will be held on 24.08.2016 Wednesday on 7:00 am in police line. Plz Come with your original documents.*". On the said date, the Petitioners in the Petitions appeared in the interview for the said post and were declared successful candidates for Dolphin Squad. Thereafter, they appeared for the Medical Examination on the direction of the Respondent No. 3.

3. In the meanwhile, about more than 550 candidates could not pass the interview for the post of the Dolphin Squad and were declared as ineligible candidates. Feeling aggrieved by the interviews, the said persons filed Writ Petitions Nos. 28788/2016, 30791/2016, 30703/2016, 30905/2016, 28956/2016, 29128/2016, 30963/2016, 31376/2016, 29322/2016, 31736/2016, 31897/2016, 31914/2016, 31972/2016, 32210/2016, 32104/2016, 32241/2016 and 32242/2016 before this Court which were allowed vide order dated 17.10.2016. Due to allowing the said writ petitions, the appointment letters of the Dolphin Squad of the Petitioners in the Petitions were

stopped on the ground that they had not applied for the said post and in compliance of orders in the said writ petitions, the writ petitioners were issued appointment letters.

4. On 29.05.2017, the Petitioners in the instant Petitions came to know that the Respondents advertised the remaining posts of PRU without adjustment of the waiting list of the candidates. Feeling aggrieved by the said advertisement, the Petitioners of the Petitions promptly resorted to the Respondents who flatly refused to assess the genuine request of the Petitioners. Hence, these petitions.

5. Report and parawise comments have been filed on behalf of the Respondents vehemently denying the allegations levelled in the Petitions and praying for dismissal of the same.

6. To plead the Petitions, it has been *inter alia* submitted by the learned counsel for the Petitioners that the Petitioners were fully qualified for the post advertised but have been deliberately deprived of the same; that a discriminatory attitude has been adopted towards the Petitioners as they were put in the waiting list, and they should have been accommodated for the remaining seats instead of advertising the same by the Respondents; that the Petitioners have appeared and passed all the tests and interviews but have been ignored on the basis of mala fide, as such, they are also liable to be declared eligible candidates for the post of PRU; that the Petitioners have not been treated in accordance with law; and that the Petitioners be declared eligible candidates for the appointment of

PRU in accordance with the order dated 17.10.2016 passed by this Court in Writ Petition No. 28788 of 2016.

7. The learned counsel for the Petitioners has placed reliance on the order dated 16.05.2017 passed in the **Writ Petition No. 38980 of 2016** titled *Muhammad Ashfaq etc. Province of Punjab etc.*, and judgments titled *Rafaqat Ali v. Executive District Officer (Health) and others* (2011 PLC (C.S.) 1615), *Government of NWFP through Secretary, Education Department, Peshawar and others vs. Qasim Shah* (2009 SCMR 382) and *Anwar Shah and 5 others v. Secretary Government of Balochistan Irrigation and Power Department, Quetta and 5 others* (2014 PLC (C.S.) 250).

8. On the other hand, learned Law Officer vehemently contested the arguments advanced by the learned counsel for the Petitioners and prayed for dismissal of these Petitions.

9. Mian Bilal Bashir, Advocate on Court's call, assisted the Court and has produced the judgments of the apex Courts for and against the Petitioners.

10. This Court has given anxious considerations to the contentions of the learned counsels of the parties and has gone through the record annexed therewith.

11. From the perusal of report and parawise comments filed by the Respondents, it reveals that admittedly, the Petitioners of the Petitions were low in merit, therefore, put in the waiting list. They were called through a message for re-interview for the post of the Dolphin Squad

with the permission of competent authority. They had undergone the interview process and were declared successful. On filing the above-said seventeen (17) writ petitions by the candidates of the Dolphin Squad, the Petitioners were not accommodated in Dolphin Squad rather the said writ petitioners were appointed in compliance of this Court's order. The record further reveals that the waiting list of 41 candidates at the rate of 5% was prepared and displayed which was valid for thirty (30) days, which expired on 12.05.2017. However, during the said period, none of the appointed candidates submitted in writing that he did not want to join PRU as a constable. Therefore, the advertisement for the vacant vacancies (PRU-Phase-III) was published in the Daily Newspaper and after qualifying written, physical endurance tests and interviews, 418 candidates have been selected for recruitment in PRU Phase-III and their joining the department is under process.

12. In this view of the matter, it is settled proposition that a waiting list prepared in an examination does not furnish a source of recruitment. It is only operative in contingency that if any selected candidate does not join, then the candidate from waiting list can be pushed up for recruitment. Furthermore, waiting list candidate has no vested right to be appointed except when selected candidate does not join while the waiting list is still operative.

13. In the Petitions in hand, the Petitioners have not controverted that the waiting list was valid for thirty (30) days which expired on 12.05.2017, and no appointed candidate during the said period

submitted in writing that he did not want to join PRU as a constable. None of the Petitioners have ever challenged either the validity of thirty (30) days of the waiting list or its expiry. A candidate in the waiting list, in the order of merit, has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided, then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. The Petitioners, therefore, have no vested right except to the limited extent, indicated above.

14. Moreover, it is alleged by the learned Counsel for the Respondents that the life of waiting list prescribed therein is only thirty (30) days. It is observed here that if there is any delay in intra Departmental correspondence or there is any inaction on the part of the Department in not communicating the unfilled vacancy to the Authority concerned, the candidates in the waiting list cannot be made to suffer for the inaction over which they have no control. It is to be seen whether despite the availability of the vacancy, the authorities have shown due diligence and if there is any delay on the part of the Government or its authority, on mere technical interpretation, and adhering to the period of thirty (30) days prescribed therein, right of waiting list candidate to get appointment cannot be

defeated, else, such a candidate otherwise would stand discriminated and this action of the Government would be illegal, arbitrary and violative of Article 25 of the Constitution.

15. I have given my anxious and in depth consideration to the submissions advanced on behalf of the parties. Certain facts between the parties are undisputed, namely, the recruitment in question became final and the result was declared by the Respondents. A waiting list candidate does not have any indefeasible right to get appointment merely for the reason that his name finds place in the waiting list. An applicant, whose name appears in the waiting list, does not get an enforceable right for being appointed to a post except for the condition mentioned above. The candidates in the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative. Even the waiting list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period. The waiting list candidates have no right unless and until the authority itself has taken decision to appoint a person from the waiting list, such a waiting list candidate is entitled to be appointed. The Government can, by a policy decision, appoint people from the waiting list. Thus, from the aforesaid discussion, it is evident that a waiting list candidate can seek appointment only if such a provision has been made under any rules or an executive order having

force of law or the scheme of appointment enforced by the authorities provide for making appointment from the waiting list, in case vacancy remains unfilled on account of non-joining of the selected candidates. However, it is neither obligatory nor mandatory for the employer to prepare simultaneously a waiting list or to keep a waiting list intact as and when any selection is made besides the selected list, unless a provision is in place making it obligatory to prepare a waiting list. It is always open to the employer not to prepare any waiting list and after declaring the result of the selected candidates, to make appointment therefrom and in case any vacancy remained unfilled, to make a fresh selection instead of looking for a waiting list. However, where the provision for waiting list has been made, the same has to be observed strictly and within the four corners of such provision and not beyond that. The right of waiting list candidate is a kind of right which is not enforceable in the absence of any statutory provision conferring a right upon him to claim appointment, in case selected candidate failed to join. In other words, the right of a wait list candidate, thus, is a very weak kind of right and is not enforceable unless supported by a rule or executive order having force of law. It is not out of place to mention here that the learned counsel for the Petitioners has failed to point out any rule or executive order having force of law to accommodate the Petitioners/persons from waiting list. Guidance in this regard can be sought from the case titled *Musa Wazir and 2 others v. N.W.F.P. Public Service Commission through its Chiarman and others* (1993 SCMR 1124) wherein the Hon'ble

Supreme Court of Pakistan has held that where posts were vacated by non-joinder of selected candidates or subsequent requisitions were received, the ordinary course for the Public Service Commission and the Government should be to re-advertise those posts.

16. Moreover, the Hon'ble Supreme Court of Pakistan in case titled **Dr. Faizur Rehman and others v. N.W.F.P. Public Service Commission, Peshawar (1996 SCMR 589)** has held as under:

*“The decision in Musa Wazir's case, supra, no doubt, did not affect the past and closed transactions namely, the cases where appointments were already finalized before the decision in Musa Wazir's case, supra, was given by this Court on basis of the then prevailing practice of maintenance of waiting' list of candidates. However, after the date of the decision in Musa Wazir's case, supra, no further recommendation could be made by the Commission on the basis of the waiting list of candidates. The admitted position in the above appeals is that none of the appellants were either recommended by the Commission or appointed against any post on the basis of waiting list of candidates on the date the decision was given by this Court in Musa Wazir's case, supra. The appellants, therefore, could not claim any benefit on the basis of the old practice of Commission of maintaining a waiting list of candidates.”*

17. Furthermore, the Respondents have vehemently denied the fact that the Petitioners have ever approached them in person or through any application for redressal of their grievance. The judgments produced by the learned counsel for the Petitioners do not support

them as the same are distinguishable from the cases in hand as each and every case has its own facts and circumstances, therefore, cannot be relied upon these case. The Petitioners have also not provided for comparison, any document or name of the wait-listed person who was recruited. Provisions of Article 25 of the Constitution will not help the cause of the Petitioners and no case of discrimination in terms of the said Article had been made out.

18. In view of what has been discussed above, the instant petition, being bereft of any force, is hereby dismissed.

(JAWAD HASSAN)  
JUDGE

Announced in open Court on the 22<sup>nd</sup> day of December 2017

*Approved for reporting*

JUDGE