

FORM No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Case No: Writ Petition No.18420 of 2016

Waseem Yaqoob versus Government of the Punjab, etc.

S.No.of order / Proceeding	Date of Order/ Proceeding	Order with signature of Judge, and that of parties' counsel, where necessary
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02.03.2017	Mr.Muhammad Younas Bhullar, Advocate for the petitioner. Mr. Muhammad Ejaz, Assistant Advocate General, on Court's call.	
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Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner calls in question order dated 20.04.2016 whereby appointment of the petitioner as security constable particularly meant for the security of foreigners specially Chinese was refused on the basis that the petitioner was involved in a criminal case.

2. Brief facts giving rise to the filing of this writ petition are that Notification for the recruitment of 131 posts of Security Constables for Special Protection Unit (SPU) District Kasur were advertised. The petitioner being eligible candidate applied for the post of Security Constable and after conducting physical test he was declared successful. He also appeared in the National Testing Service from where he got 73 marks and was declared as successful candidate and his name was figured in the final list of candidates. After conducting all the test, a character report of the petitioner was called from the local police who

reported that the petitioner was involved in some criminal case vide FIR No.435 dated 17.08.2011 under sections 447/354/452/148/149 PPC at Police Station, Khudian District Kasur on the basis of which the petitioner was not permitted to join. The petitioner conveyed to the authority that in the year 2011 case was although registered against the petitioner on account of personal vendetta of the complainant yet after facing trial he was exonerated and acquitted by the learned Magistrate Section 30, Kasur on 24.07.2013. But on account of the letter dated 26.06.2014, any candidate found involved in criminal case (either under trial or acquitted on multiple grounds) would not be appointed in police department as constable, hence this writ petition.

3. Learned counsel for the petitioner contends that when the petitioner was of 15 years some criminal case was registered against him and after his honourable acquittal he has been and is enjoying good reputation in the vicinity and that such conditionality is against the dictum laid down by the apex Court in MUHAMMAD NADEEM ARIF and others vs. INSPECTOR GENERAL OF POLICE, PUNJAB, LAHORE and others [2011 SCMR 408] where the basic memorandum relating to the policy/rule which was issued by the Inspector General of Police in favour of the petitioner was not valid itself having any legal backing. He also adds that the petitioner is entitled to the benefit of acquittal order. Reliance is placed upon DIRECTOR-GENERAL,

INTELLIGENCE BUREAU, ISLAMABAD vs MUHAMMAD JAVED and others [2012 SCMR 165], CHAIRMAN AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN and another vs. MUMTAZ KHAN [PLD 2010 Supreme Court 695], SUPERINTENDING ENGINEER GEPCO, SIALKOT vs. MUHAMMAD YOUSAF [2007 SCMR 537] and ASGHAR ALI and others vs. MANSOOR MUZAFFAR ALI and others [2012 PLC(C.S)502].

4. Conversely, learned law officer on the basis of report and Parawise comments submitted by respondent No.2 submits that the committee minutely examined the case and is of the view that there is no need of any relaxation of rules/policy. In the report and Parawise comments submitted by respondent No.3 it was specifically mentioned that notwithstanding the acquittal of the petitioner in case FIR No.435 dated 17.08.2011 under sections 447/354/452/148/149 PPC at Police Station, Khudian District Kasur it was decided principally on 26.06.2014 vide letter No.SE-IV/7317-70/II that those candidates who were involved in criminal cases (either under trial or acquitted on multiple grounds) shall not be appointed in the police department as constable. The additional reasons given in the said order show that such involvement of the petitioner in criminal case will prohibit him to be recruited as security constable particularly for foreigner; specially Chinese. This specific observation seems to be directly in conflict with the basic principal of the

criminal administration of justice under which a person is presumed to be innocent unless proven guilty and person though involved in criminal case, if acquitted shall also be considered as a person against whom no case was ever registered. It will be a great irony of our society that even an acquittal of a person did not reconstitute his previous position who would continue to live his entire life with an obsolete and baseless stigma that he once being involved in a criminal case that too relating to a personal vendetta. This is considered a serious threat to the criminal administration of justice and offensive to the judicial system as a whole which not only shows mistrust but also a clear disrespect to it. The said approach will also be in direct conflict with provision of section 403 Cr.P.C and Article 13-A of the Constitution of Islamic Republic of Pakistan, 1973 under which double jeopardy has been prohibited. This Court seeks guidance from CHAIRMAN AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN and another vs. MUMTAZ KHAN [PLD 2010 Supreme Court 695], the relevant extract of which is reproduced below:-

“Be that as it may, an ultimate acquittal in a criminal case exonerates the accused person completely for all future purpose vis-à-vis the criminal charge against him as is evident from the concept of autrefois acquit embodied in section 403, Cr.P.C and the protection guaranteed by Article 13(a) of the Constitution of Islamic Republic of Pakistan, 1973 and, according to our humble understanding of the Islamic jurisprudence, Afw(waiver) of Sulh (compounding) in respect of an offence has the effect of purging the offender of the crime.

The Hon'ble Supreme Court of Pakistan in SUPERINTENDING ENGINEER GEPCO, SIALKOT vs. MUHAMMAD YOUSAF [2007 SCMR 537] it was held that if civil servant has been acquitted he is to be reinstated when his dismissal order was based on this very ground. Even in DIRECTOR-GENERAL, INTELLIGENCE BUREAU, ISLAMABAD vs MUHAMMAD JAVED and others [2012 SCMR 165] the apex Court went on to observe that the payment of Diyat money on the basis of compromise under section 435 Cr.P.C cannot be considered as his disqualification for his reinstatement. Here, I seek guidance from MUHAMMAD ASLAM vs. SABIR HUSSAIN and others [2009 SCMR 985] and Dr.MUHAMMAD ASLAM vs. GOVERNMENT OF N.W.F.P through Secretary, Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others [1998 SCMR 1993] wherein it was held that accused civil servant in case of acquittal was to be considered to have committed no offence because the competent Criminal Court had freed/cleared him from an accusation or charge of crime. Relevant extract is reproduced below:-

“The appellant was acquitted by the trial Judge as already pointed out above. It shall, therefore, be presumed that the allegations leveled against him are baseless. In consequence, he has not been declared guilty. In presence of above meaning of “acquittal” the appellant is held to have committed no offence because the competent Criminal Court has freed/cleared him from an acquisition or charge of crime. The appellant is, therefore, entitled to the grant of arrears of his pay and allowances in respect of the period he remained under suspension on the basis of registration of murder case against him. This appeal succeeds and is allowed with no order as to costs.”

5. Keeping in view the above discussion this Court is of the considered view to hold that any condition creating impediment on the job in the respondents/department on the basis of acquittal in criminal case would not and shall not be read as disqualification under the Constitution of Islamic Republic of Pakistan, 1973, therefore, this writ petition is allowed and the impugned order dated 20.04.2016 is hereby set aside and respondent No.2 is directed to decide the representation of the petitioner in accordance with law which shall be deemed to be pending before him.

6. **Disposed of** in the above terms.

(ALI BAQAR NAJAFI)
JUDGE

Approved for reporting.

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