

filed on 22/11/17

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI
(CONSTITUTIONAL JURISDICTION)

Constitution Petition No. D-7097 of 2016

1323

Karamat Ali & Others.....Petitioners

Versus

CMA # 33234/2017

Federation of Pakistan & Others.....Respondents

APPLICATION UNDER SECTION 151, CIVIL PROCEDURE CODE, 1908

For the detailed reasons as stated in the accompanying Affidavit, it is most respectfully and most humbly prayed on behalf of the Petitioners that this Honourable Court may graciously be pleased to direct the Respondent No.3 ['Chief Secretary, Government of Sindh'] and the Respondent No.7 ['Inspector General of Sindh Police'] to file a report regarding the implementation of the directions issued by this Honourable Court in Paragraph 96 (a) & (b), Read with, Paragraph 101(k), in relation to the enactment of rules regarding transfer, posting & tenure in the Police force, of the Judgment dated: 07-09-2017, passed in the present Constitution Petition.

The abovementioned prayer is made in the interest of justice and may graciously be granted.

Karachi:

Dated: November 22nd, 2017

Advocate for the Petitioners

1325

**IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI
(CONSTITUTIONAL JURISDICTION)**

Constitution Petition No. D-7097 of 2016

Karamat Ali & Others.....Petitioners

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Federation of Pakistan & Others.....Respondents

**AFFIDAVIT IN SUPPORT OF THE APPLICATION UNDER SECTION
151, CIVIL PROCEDURE CODE, 1908**

I, Nadeem Ahmed, son of Mushir Ahmed, Muslim, Adult, Resident of House No. F-97, Naval Colony, Mauripur, Hawkesbay Road, Karachi, holding CNIC No.42401-1554261-7, do hereby state on oath as under:

1. That I am the lawfully appointed Attorney of the Petitioner No.4 in the present case, and I am well conversant with the facts of this case.
2. That the accompanying Application under Section 151, Civil Procedure Code, 1908, has been filed and drafted under my instructions and for the sake of brevity, the entire contents of the accompanying Application may be read as a part of this Affidavit.
3. That this Honourable Court was pleased to dispose off the present case vide Judgment dated: 07-09-2017. It is important to mention here that this Honourable Court in Paragraph 96 of the Judgment dated: 07-09-2017 was pleased to issue the following directions:

→ P. 88-9

- a. "...The Inspector General shall, within 30 days, frame draft rules under s. 12 setting out the manner in which he (and/or the police hierarchy acting through him) is to exercise the power of transfers and postings in the police force at all levels (including PSP officers serving in the Province). The rules must be framed in such manner as ensures autonomy of command and independence of operation. The rules must be transparent in form and reality, and fair in operation and effect. They must also, *inter alia*, set out the period or term that is ordinarily to be served at any level/post, so as to ensure that the rule laid down by the Supreme Court in the Anita Turab case shall apply in relation thereto.
 - b. The draft rules shall be transmitted to the Provincial Government (here meaning the Provincial Cabinet) and also, to ensure transparency, posted simultaneously and prominently on the website of the Sindh Police (i.e., on the home page). The Provincial Cabinet must consider the draft rules at its next meeting or a meeting specifically called for such purpose within 15 days (whichever is earlier). The agenda for the meeting must be circulated in advance and the Inspector General must be invited to attend the meeting. If the rules are approved as proposed, then the same shall take effect in terms of s. 12 from the date of the Cabinet meeting. If any changes, modifications or amendments are made, which are concurred to in writing by the Inspector General, the same result will follow. If the rules are not considered or approved by the Provincial Cabinet or changes, modifications or amendments are made therein which are not accepted by the Inspector General, then the entire exercise will have to be repeated. The exercise shall be subject to judicial review, which may be sought by means of an appropriate application filed in these petitions.
 - c. Till such time as the rules are framed and approved in terms as stated above, and with immediate effect, the power of transfers and postings in the police force, at all levels and including that of PSP officers, shall be exercised only by the Inspector General, and any orders issued by him in this regard shall be self-executing. Without prejudice to the foregoing, they will also be forthwith given full effect by the Provincial Government, including all Departments and authorities thereof.
 - d. Without prejudice to what has been said in sub-para (c), the Inspector General shall also immediately review the transfers and postings made in the police force since judgment was reserved..."
4. That pursuant to the abovementioned directions of this Honourable Court, the Respondent No.7, i.e. the Inspector General of Sindh Police, under Section 12, Police Act, 1861, framed the draft Sindh Police (Posting, Transfer & Tenure) Rules, 2017 [hereinafter referred to as the 'Draft New Rules'], and transmitted the aforementioned Draft New Rules to the Provincial Cabinet on 06-10-2017 i.e. within 30 days of the Judgment dated: 07-09-2017.

A copy of the draft Sindh Police (Posting, Transfer & Tenure) Rules, 2017, is annexed and marked as Annex 'A'

5. That in light of the abovementioned directions of this Honourable Court, the Provincial Cabinet was supposed to consider the Draft New Rules at its next meeting or in a meeting specifically called for such purpose within 15 days of receiving the Draft New Rules from the Respondent No.7 (whichever is earlier). Therefore, it is clear that meeting of the Provincial Cabinet in order to consider the Draft New Rules was supposed to be held no later than 21-10-2017 as the Respondent No.7 had transmitted the Draft New Rules to the Provincial Cabinet on 06-10-2017. However, the Provincial Cabinet held its meeting on 28-10-2017 i.e. after a delay of 7 days, thereby failing to implement the Judgment dated: 07-09-2017 in its letter and spirit.

6. That as is evident from the Minutes of the Meeting of the Provincial Cabinet held on 28-10-2017, the Provincial Cabinet, had constituted a committee to review the Draft New Rules. However, it is pertinent to mention here that the Respondent No.7 i.e. the Inspector General of Sindh Police, was not included in the committee, thereby not implementing the Judgment dated: 07-09-2017 in its letter and spirit. Moreover, the Provincial Cabinet, in order not to implement the Judgment dated: 07-09-2017 in its letter and spirit, has raised, inter-alia, the following objections in relation to the enactment of the Draft New Rules. Firstly, an objection has been raised that there is need to define the role of the Provincial Government in the Draft New Rules in relation to the Competent Authority supervising the actions of the Inspector General of Sindh Police. Secondly, the ultimate power of posting and transfers should be with the Provincial Government. Thirdly, an individual officer cannot safeguard the public interest and it is the responsibility of the elected Government to look after the public interest. Fourthly, a committee formed under the Chairmanship of the Minister of Law, Sindh Government, was to frame a new Police Act, however, if the Draft New Rules are approved then

there would be no need to enact the new Police Act. The Act is a superior law whereas the Rules are subservient to the Act. It is obvious that the aforementioned objections raised by the Provincial Cabinet go against the principle findings of the Judgment dated: 07-09-2017 i.e. ensuring the autonomy of command and independence of operation, and have been raised in order to delay and/or avoid the enactment of Draft New Rules and the implementation of the Judgment dated: 07-09-2017 in its letter and spirit.

A copy of the Minutes of the Meeting held on 28-10-2017 and Report of the Committee dated: 23-10-2017 is annexed and marked as Annex 'B' & 'B-1'

7. That without prejudice to the above, the Provincial Cabinet in the meeting held on 28-10-2017 had decided to reconsider the Draft New Rules and directed the already constituted committee to further review the Draft New Rules and submit a report with specific recommendations in 15 days. It is pertinent to mention here that the already constituted committee does not include the Respondent No.7, i.e. Inspector General of Sindh Police, which in itself is a non-implementation of the Judgment dated: 07-09-2017. It is further pertinent to mention here that the aforesaid 15 days have already expired, however, till date no report has been submitted by the committee and the Provincial Cabinet has not reconsidered the Draft New Rules, thereby, delaying the enactment of the Draft New Rules and the implementation of the Judgment dated: 07-09-2017 in its letter and spirit.

8. That it is pertinent to mention here that the Provincial Cabinet, vide Letter dated: 08-11-2017, has also attempted to remove/change the Respondent No.7 i.e. the incumbent Inspector General of Sindh Police, in order to delay and/or avoid the enactment of the Draft New Rules and the implementation of the Judgment dated: 07-09-2017 in its letter and spirit.

A copy of the Letter dated: 08-11-2017 is annexed and marked as Annex 'C'

9. That in view of the above, this Honourable Court may graciously be pleased to direct the Respondent No.3 ['Chief Secretary, Government of Sindh'] and the Respondent No.7 ['Inspector General of Sindh Police'] to file a report regarding the implementation of the directions issued by this Honourable Court in Paragraph 96 (a) & (b), Read with, Paragraph 101(k), in relation to the enactment of rules regarding transfer, posting & tenure in the Police force, of the Judgment dated: 07-09-2017, passed in the present Constitution Petition.
10. That unless the accompanying Application is granted, the interest of the Petitioners and the public at large will be seriously prejudiced.

DEPONENT