

**IN THE HIGH COURT OF SINDH, KARACHI**

**Constitutional Petition No.D-2259 of 2023**

*[Muhammad Wajid versus Federation of Pakistan and 04 others]*

Before:

**Justice Mohammad Karim Khan Agha**

**Justice Adnan-ul-Karim Memon**

Mr. Nizamuddin, advocate for the petitioner.

Mr. Wajiha M. Mehdi, Assistant Attorney General.

**Dates of hearing & Order: 19.9.2025**

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**ORDER**

**Adnan-ul-Karim Memon, J.** The petitioner has filed a Constitutional Petition requesting this court to revoke the letter dated April 20, 2023, which discharged him from service with the Pakistan Navy. He requests reinstatement along with all back pay and benefits.

2. The petitioner, a sailor with 13 years of service in the Pakistan Navy, claims that since January 2022, his superiors have been targeting and harassing him. He was first accused of "immoral activities" in a letter on April 8, 2022, without any proof or inquiry. He alleges that on April 25, 2022, his Commanding Officer (Respondent No. 4) forced him to sign an application for discharge from service on "compassionate grounds."

3. The present petition has been filed by the petitioner in this Court under Article 199 of the Constitution, which also contains a bar in its sub-Article (3), providing that an order shall not be passed by a High Court under sub-Article (1) of Article 199 of the Constitution, on the application made by a person who is subject to any law relating to Armed Forces of Pakistan, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action about him, as a person subject to such law. Petitioner's counsel was confronted with the aforementioned legal proposition; however, he submitted that the discharge order is arbitrary and illegal because the petitioner was forced to sign the application for "compassionate grounds" and did not give his free consent. The counsel claims the respondents acted with malicious intent, noting that the initial, unproven allegations of "immoral activities" were later used as a pretext to force a discharge on different grounds. The petitioner was not given a fair opportunity to defend himself and was deprived of his pension and other service benefits, which his family, particularly his mother, relied on for medical treatment. The counsel requests that the petition be granted. He relied upon the case of *Federal Government M/o Defence Rawalpindi v. Lt.Col. Munir*

*Ahmed Gill (2014 SCMR 1530)* and *Rana Muhammad Naveed and another v. Federation of Pakistan through Secretary M/o Defence (2013 SCMR 596)*.

4. The Learned Assistant Attorney General (AAG) opposed the petition, arguing that the impugned orders cannot be called in question before this Court due to the bar created in Article 8(3) and Article 199(3) of the Constitution. She prayed for dismissal of the instant petition.

5. We have considered the arguments delivered before us, in the light of relevant law and the record.

6. Primarily, the Constitution has fixed the parameters of powers of this Court under sub-Article (2) of Article 175, explicitly envisaging the exercise of only that jurisdiction which is conferred by the Constitution or by or under any law. Indeed, Article 8 of the Constitution stipulates that the State shall not enact any law that takes away or abridges the fundamental rights conferred on citizens by its Chapter I, and any law made in contravention of this Article shall, to the extent of such contravention, be void. However, sub-Article (3) of Article 8 of the Constitution denotes that this prohibition shall not be attracted in case of any law relating to Members of Armed Forces, or of the police or such other forces as are charged with the maintenance of Public Order, to ensure the proper discharge of their duties or the maintenance of discipline among them.

7. The Supreme Court of Pakistan, in the case of "Force Commander ASF v. Muhammad Rashid" (1996 SCMR 1614), extensively examined the functions of the Navy and the liabilities of its officers and members. The Court's judgment, specifically in paragraph 23, considered how the Pakistan Army Act (PAA) applies to naval personnel and whether it can exclude the jurisdiction of civil courts.

8. Supreme Court has explained in the case of Ex.Lt. Col. Anwar Aziz v. Federation of Pakistan", (PLD 2001 SC 549), the scope of the jurisdictional bar under sub-Article (3) Article 199 of the Constitution. Its relevant paragraphs 8 and 9, at page 553, are reproduced below for ready reference: ---

"(8) This Court can interfere only in extraordinary cases involving the question of jurisdictional defect when proceedings before that forum become Coram non iudice or mala fide. The matters relating to the Members of the Armed Forces or who for the time being are subject to any law relating to any of these Forces in respect of terms and conditions of service or in respect of any action taken in relation to him as Member of Armed Forces as a person subject to such law, is barred by Article 199(3) of the Constitution. Article 8(3) of the Constitution also envisages that the provisions of this Article shall not apply to any law relating to members of the Armed Forces, or of the Police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them. According to section 133(3) (B) of the Act the decision of the Court of appeal is final and cannot be called in question before any Court or Authority whatsoever."  
(9) By now it is well-settled principle of law that the High Court under Article

199(3) of the Constitution can examine the cases falling within three categories, namely, where impugned order/judgment is mala fide, or without jurisdiction or coram non judice."

9. So, in our view, the impugned order is neither without jurisdiction nor Coram non judice. There is nothing on record to convince us that respondent-Navy had acted with any mala fide, as in our view, this element is lacking. Moreover, as it was observed in para 6 of the judgment of the Supreme Court in Anwar Aziz v. Federation of Pakistan (ibid), the petitioner herein had also availed the jurisdiction of the Armed Forces by contesting his proceedings and fully exhausting the remedy available under the relevant law.

10. It is, therefore, concluded that none of the prayers could be granted to the petitioner due to the bar contained under Article 199(3) of the Constitution. Reliance is placed on the case of Brig. (Rtd.) F.B. Ali v. The State in (PLD 1975 SC 506). The relevant portion on page 542 is quoted below: ---

"The learned Attorney-General has contended that the words relating to in clause (3) are words of wide connotation and after the amendments made in 1974, they operate as a complete bar as they cover every conceivable action taken in relation to even a person for the time being, subject to the Army Act as the appellants were. However wide the connotation of these words may be they cannot possibly act as a bar where the action impugned is itself without jurisdiction or coram non judice or has been taken mala fide as held by this Court in State v. Ziaur Rahman. On the other hand if the action is with jurisdiction and bona fide then I am prepared to concede that the bar will be operative in respect of almost anything if it is in relation to a person who is even only for the time being subject to a law relating to the Armed Force. The action must, however, be one which is taken while he is so subject and not before he becomes so subject or after he ceases to be so subject."

11. Adverting to the assertion of the petitioner that he was not subject to the PAA, the same is misconceived on the premise that every officer/member of the force is subject to the PAA, as discussed supra, thus findings cannot be upset unless the same is shown to have been carried out without jurisdiction or with malafide intention. On the aforesaid proposition, we are fortified by the judgment of the Supreme Court dated 14.01.2020 passed in the case of Fayaz Khan v. Government of Pakistan through Secretary Aviation Cabinet Secretariat, Aviation Division, Islamabad and others (2020 SCMR 432 ).

12. For the reasons aforesaid, this Constitutional Petition fails and, accordingly, the same is dismissed. Consequently, connected miscellaneous applications are also dismissed. However, there shall be no order as to costs.

**JUDGE**

**HEAD OF CONST. BENCHES**