

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Naimatullah Phulpoto,
Mr. Justice Muhammad Karim Khan Agha*

CONST. PETITION NO.D-1261 OF 2014

Petitioner	Through Syed Mureed Ali Shah, Advocate
The State	Through Mr. Hakim Ali Shaikh, Additional Advocate General.
Respondent No.4 Kamran Memon	Through Mr. Haq Nawaz Talpur, Advocate
Date of hearing	23.04.2019
Date of Announcement	26.04.2019

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The Petitioner has filed this petition with the following prayers:-

- "Restrain the Respondent No.4 from working as Sub Inspector Anti-Corruption Department, District Thatta who is misusing his powers and authority by harassing, threatening, insulting, blackmailing, terrorizing or illegal demands from the petitioner as well as other innocent peoples of the District Thatta;
- Appoint a senior, impartial officer to conduct an inquiry against the Respondent No.4, who has obtained such posts by showing fake documents and with malafide intentions in connivance of government officials and politicians;
- Declare that the Respondent No.4 cannot take salary from different government departments simultaneously, which is nullity in the eyes of law, the same being without lawful authority and jurisdiction;
- Declare that the Respondent No.4 acted in excess of jurisdiction and in violation of the law therefore, he is entitled to be punished under the law;
- Direct the Respondent No.3 & 5 to take a serious action and lodge an FIR against the Respondent No.4 and other persons

helping and assisting him and action be taken against Respondent No.4 under Services Act & Criminal Law;

- f) Direct the Respondent No.3 & 5 to provide safety & protection of life and property of the Petitioner and his family;
- g) Cost of this petition may please also be awarded;
- h) Any other or better relief or relief's which this Honorable court may deem fit and proper in the circumstances of the case."

2. The brief facts of the case according to the petitioner are that petitioner is residing in District Thatta with his family and has never engaged in any illegal and unlawful activities and is man of high morality, law abiding citizen of this country. The petitioner has filed the instant petition against the respondents for performing their obligatory duties which they are not performing as the Respondent No.4 who is Sub Inspector, Anticorruption Department, Thatta, posing himself as PA to Minister Sadiq Ali Memon and also drawing salaries from 2/3 government department. He obtained / got the present post by placing fake / bogus degree/certificates. Respondent No.4 sent letter dated 22.05.2012 to liaison Officer, Construction, HSCO, Hyderabad for electrification of various fake / bogus villages in District Thatta and enclosed fake list of persons as residents of UC-Makli those villagers have developed as a Housing Schemes, which were sponsored by Turkish Government for rehabilitation flood affected people in District Thatta & Sujawal. When the petitioner protested against the illegal acts of respondent No.4 he retaliated by lodging an FIR against the petitioner and hence he has sought the relief's set out in his prayer clause above.


3. Learned counsel for the petitioner at the very outset did not press prayer clauses (a), (d) and (f) however submitted that the petition was fully maintainable to the extent of prayer clauses (b), (c) and (e) and contended that the court should pass appropriate orders in respect of the same.

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4. On the other hand learned counsel for the Respondent No.4 has argued that this petitioner has filed this petition with malafide intention, without any cause of action and the same is not maintainable. It is further contended that petitioner has miserably failed to place on record any cogent and conclusive evidence or proof in support of his averments, allegations and contentions against the Respondent No.4 and the petitioner has filed this petition just as a tool of blackmailing and approached this court with unclean hands.

5. We have heard learned counsel for the parties and Addl. Advocate General and have considered the material available on record.

6. Firstly, we note that this petition has been moved under Article 199 of the Constitution by invoking the constitutional jurisdiction of this court. Such a petition can only be moved if no other adequate remedy is available under the law. With regard to prayer clauses (b) (c) and (e) which are being pressed by the petitioner we are of the view that adequate alternate remedies exist under the law for which the petitioner may seek relief especially keeping in view recent judgment passed by this Court at Sukkur Bench in C.Ps. No.D-2149 & 4729 of 2015 and 172, 935, 1110 to 1123 of 2018 dated 30.05.2018. Such alternate relief may lie in approaching the concerned department/agency by way of complaint against Respondent No.4, a petition for quo warranto and any other relief under the relevant law. It is also well settled that this court whilst exercising its constitutional jurisdiction cannot conduct factual inquiries into factual disputes which some of the relief's pressed in the petition may require.



7. In the constitutional jurisdiction the petitioner must also approach the court with clean hands. In our view, based on the particular facts and circumstances of the petition at hand, this is primarily a harassment petition dressed up in order to seek other reliefs and thus in our view the petitioner has not come to this court with clean hands.

8. Thus, for the reasons mentioned above we hereby dismiss the petition as being not maintainable however with the observation that the petitioner, if so advised, may approach the appropriate forums under the law in order to redress his grievances.

9. The above petition is disposed of in the above terms.