

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No. D-8948 of 2017

Date	Order with signature of the Judge
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For hearing of main case.

16.03.2021

Mr. Naveed Ahmed Khan, advocate for the petitioner.

Mr. Muhammad Nishat Warsi, DAG.

Ms. Lieutenant Raeesa, representative of Pakistan Navy.

Through the instant Petition, the Petitioner is seeking to have the orders dated 17.12.2012 & 26.11.2013, passed by respondents 3&4 set aside and thereby, praying for his reinstatement in service as Sailor and restoration of all back benefits.

It is an admitted fact that the Petitioner has remained a Member of the Armed Forces and as such his service was governed by the Ordinance, Rules, and Regulations of Pakistan Navy. For the sake of brevity, we would like to reproduce the relevant portion of Article 199(3) of the Constitution as follows:-

“(3). An order shall not be made under clause (1) on the application made by or in relation to a person, who is a member of the Armed Forces of Pakistan, or who is for the time being subject to any law relating to any of those Forces, 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 taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law.”

We are cognizant of the fact that Article 199 (3) of the Constitution stipulates a bar to jurisdiction insofar as the matters about the service of any member of Armed Forces of Pakistan are concerned. Reference in this regard may be made to the decision given in the case of Muhammad Mushtaque vs. Federation of Pakistan (1994 SCMR 2286) wherein it has been held that:-

“The High Court was approached under Article 199 for grant of a relief under Sub-Article (1) thereof. The relief regarding Fundamental Rights is included in Sub-Article (1), which is clearly barred under Article 199 (3) with reference to Sub-Article (1) thereof. The High Court had no jurisdiction in the matter.”

It appears from the record that the petitioner has been convicted under the laws governing the Armed Forces of this Country. Nobody disputes that subject Ordinance provides a remedy of review by the Federal Government or the Chief of the Naval Staff of the findings and sentence awarded to the member of the force. This also not in dispute that a review petition under Section 135 of the Pakistan Navy Ordinance is pending before the Government of Pakistan, Ministry of Defence Islamabad. At this juncture, we have inquired from the learned DAG that as to what impedes deciding the review petition, which is admittedly pending. Learned DAG submits that this petition is not maintainable on the ground that respondent No.3 has been arrayed as the necessary and proper party in the present proceedings. With the statement of

the petitioner's counsel, he does not press his relief to the extent of respondent No.3, whose name is deleted accordingly, however, subject to all just exceptions. We, therefore, while deciding this writ petition, in the exercise of the powers under Article 199 of the Constitution, have to be cognizant of Sub-Article (3) of the aforementioned Article, which envisages that no order shall be made concerning a person, who is a member of the Armed Forces, or in respect of any matter arising out of his service or in respect of any action taken about him as member of Armed Forces.

We, therefore, in absence of the exceptions as enunciated in the case-law cited above, cannot travel beyond and dilate upon the merits of the instant case and interfere with any Order passed under the hierarchy of Respondents, according to their applicable laws. However, since the petitioner has confined his submission to the extent of prayer clause (a) that his review petition pending before respondent No.1 may be ordered to be decided under the law.

To this proposition, learned DAG has agreed for disposal of this petition to the extent as discussed supra.

In view of the consensus between the parties, this petition is disposed of in the terms of the statement of learned DAG. Let the said exercise of the decision on the review petition be undertaken within a reasonable time and the compliance report be filed accordingly.

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