

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-5150 of 2022

(Muhammad Arshad v. Government of Sindh and 07 others)

Mr. M. Sabir Khan Tanoli, advocate for the petitioner

Mr. Abdul Jalil Zubedi, AAG alongwith DSP Ayaz Ahmed Pandhirani on behalf of respondents No.4 and 6

Date of hearing
& decision : 14.03.2023.

ORDER

Through the constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks direction to the respondent Police Department to decide his departmental appeal and in the meanwhile direct them to release his salary withheld with effect from January 2015 to date.

2. The case of the petitioner is that in the year 1992, he was appointed as Police Constable and promoted to the post of Assistant Sub Inspector in Sindh Police. Petitioner has submitted that in the year 2012, he was posted at Headquarter Central Khawaja Ajmir Nagri and was drawing his salary from the salary account maintained in the National Bank of Pakistan at Saleem Centre Brach New Karachi. As per the petitioner, he was transferred from Headquarters to Political Special Branch District West Karachi vide order dated 17.5.2012, subsequently, the Additional Inspector General of Police repatriated his services from Special Branch Sindh Karachi to his parent range vide letter dated 22.05.2013.

3. We asked the petitioner whether he reported and joined the parent range. He submitted that since no formal order was received by the petitioner, therefore the petitioner faced a lot of difficulty in the joining process, and in the intervening period his salary has been withheld with effect from 2015 for which he has been making hectic efforts releasing of his salary and posting, but the respondents are reluctant to either allowing him to join or releasing his salary for the aforesaid period, compelling him to approach this court on 02.09.2022. He prayed for directions to the respondents to decide his departmental appeal on the subject issue as well as release his salary for the aforesaid period.

4. Learned AAG has opposed this petition on the ground that the petitioner was relieved from the Special Branch Karachi to report to his parent unit District West Karachi vide office letter dated 22.05.2013, however, he failed to join his parent department, therefore, he is not entitled to the salary until and unless he is posted in any unit of the Police Department. According to learned AAG, the petitioner has drawn his last pay from Paposh Nagar PS District Central Karachi for February 2015, and since then his whereabouts are unknown. He prayed for the dismissal of this petition.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The question is whether the petitioner is entitled to the salary with effect from January 2015 to date.

7. We have been informed that respondent No.6 issued a relieving order of the petitioner vide letter dated 22.5.2013 with direction to the petitioner to report his parent for posting and pay, however, the petitioner has failed to report back for a long.

8. After hearing the pros and cons, there is no doubt that the petitioner preferred a departmental appeal, which is pending before the competent authority. It is well settled that this court before exercising extra-ordinary jurisdiction must be satisfied with the non-availability or inefficacy of alternate remedy provided under law and once it is shown to the satisfaction of this court that alternate remedy is expedient, effective, then obviously courts would be reluctant to exercise writ jurisdiction under Article 199 of the Constitution the remedy available under the law must be able to accomplish the same purpose which is sought to achieve through a petition under Article 199. If this is the position of the case, without touching the merits of the case, we deem it appropriate to remit this matter to the competent authority of respondents to look into the case of the petitioner and if he has joined his parent unit from the date of relieving order from the Special Branch, his salary shall be released and if the petitioner has failed to report he shall be proceeded under the disciplinary proceedings after providing meaningful hearing to him. The aforesaid exercise shall be completed within one month.

9. Petition stands disposed of in the above terms. Let a copy of this order be transmitted to the competent authority/IGP Sindh for compliance.

JUDGE

JUDGE