

# THE HIGH COURT OF SINDH, KARACHI

Present:

*Justice Mohammad Karim Khan Agha*  
*Justice Nisar Ahmed Bhanbhro*

**CP No.D-181 of 2019**

[Istefanosh and others v. Federation of Pakistan and others]

Petitioner	:	Istefanosh and others through Mr. Tariq Ahmed advocate
Respondents No.1&2	:	Ms. Wajiha M. Mehdi, Asstt. Attorney General
Respondent No.3	:	Mr. M.A Isani advocate
Dates of hearing	:	11-03-2025
Date of decision	:	20-03-2025

## J U D G M E N T

Mohammad Karim Khan Agha, J. - Through this petition, the petitioners pray for the following reliefs:

- i. To direct Respondent No. 1 to make and/or announce Scheme pursuant to Section 3 of the Act, 1974 for the employees (dockworkers) of Port Qasim, Karachi with the same terms, condition and stipulations as provided in the Scheme, 1973 for the dockworkers of Karachi Port.
- ii. Alternatively, declare that the scheme announced and/or made for the employees (Dockworkers) of Karachi Port is applicable to the employees (Dockworkers) of Port Qasim.
- iii. Any other relief this Hon'ble Court may deem fit.

2. Briefly the case of the petitioners is that they are permanent Dockworkers working for different Cargo handling Companies on rotation basis and are members of registered Trade Union at Port Qasim. Karachi; that in the year 1974, The Dock Workers (Regulation of Employment) Act, 1974 (Act 1974) was enacted to protect the rights and to regulate the employment of Dockworkers in order to ensure efficient performance of Dock work; that Section 3 of the Act 1974, provides that the Federal Government may, by notification in the official Gazette, make a scheme for the registration of dock

workers with a view to ensure greater regularity of employment; that pursuant to the Act 1974, the Federal Government announced a Scheme namely The Karachi Dockworkers (Regulation of Employment) Scheme 1973 which is limited to dock workers of the Karachi Port Trust (KPT) only. The petitioners seek either a similar scheme to be adopted for Port Qasim Authority (PQA) or the scheme for the KPT dockworkers be extended to them.

3. Learned counsel for the petitioners contended that the petition was maintainable and submitted that pursuant to section 3 of the Act 1974, the respondents were bound to make scheme for the employees (dock workers) working at PQA and the failure on the part of the respondents to do so is in violation of Article 25 of the Constitution of the Islamic Republic of Pakistan 1973 as such scheme had already been put in place for the dock workers of KPT and as such the dock workers of PQA were also entitled to benefit from such scheme by way of equal treatment.

4. On the other hand learned counsel for the respondents contended that the petition was not maintainable as none of the petitioners were employees of PQA and as such were not aggrieved parties within the purview of Article 199 of the Constitution. They also referred to C.P.No.D-1017 and 1025 of 1997, which was filed before this Court regarding Dock Workers on the same issue and which vide order of this court dated 12.02.1998, the matter was referred to Commission consisting of Mr. Justice (Rtd) Zahoor ul Haq and Admiral (Rtd) Wali Khan to examine whether a scheme similar to the Karachi Dock Workers (Regulation of Employment) Scheme 1973 would be advantageous to all concerned, if framed for PQA which found in the negative; they further contended that whether or not such a scheme was made for PQA was a policy decision of the executive and could not be interfered with by this Court in its Constitutional jurisdiction and as such the petition be dismissed.

5. We have heard the parties and considered the record.



6. At the very outset we find that the petitioners are not employees of PQA and as such are *not aggrieved parties* as to fall within the purview of Article 199 of the Constitution and as such this petition is liable to be dismissed on this count. In this respect in the case of **M/s Associated Cement Companies Ltd. v. Pakistan through the Commissioner of Income Tax, Lahore Range and 7 others** (PLD 1978 SC 151), it was laid down that "*writ petition can be maintained by a person provided he be an 'aggrieved person' and in order to be an aggrieved person, imperative for party to show any of his proprietary or personal right, as recognized by law, to be invaded or denied*". The same question came to be considered in another case titled as **Hafiz Hamid Ullah v. Saifullah etc.** (PLD 2007 SC 52), wherein it was laid down that "*the aggrieved person was elaborated and it was laid down that constitutional jurisdiction of High Court under Article 199(1)(a) of the Constitution can be invoked by aggrieved person which denotes the persons who have suffered a legal grievance against whom a decision has been pronounced which has wrongfully deprived him or wrongfully refused to him something which he was legally entitled*". Another case on the subject is to be found **NWFP Public Service Commission etc. v. Muhammad Arif etc.** (2011 SCMR 844). After considering the case law on this point, it was laid down that "*the right which is the foundation of an application under Article 199 of the Constitution, is a personal and individual right. The legal right may be statutory right or a right to be recognized by the law. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to perform relating to the right. There must not only be a right but a justiciable right in existence, to give jurisdiction to the High Court in the matter.*"

7. We also need to consider the language used in section 3 of the Act 1974 which is set out below for ease of reference;

*"Section 3- Power to make scheme (1). The federal Government may by notification in the official Gazette, make a scheme for the registration of dock workers with a view in ensuring greater regularity of employment and for efficient and economic turn round of ships and vessels."* (bold added)

8. It is noted that the word used is "may" rather than "shall" and it is settled by now that the word "may" is directory and not mandatory which leads the final decision in this case up to the Federal Government after considering all necessary and relevant factors. As such it is not mandatory under Section 3 of the Act 1974 for the Federal Government to make such a scheme. In this respect reliance is placed on the cases of *Gul Alam V The State* (2011 SCMR 624), *Tallat V NAB* (2019 PLD SC 112) and *Barkat Ali V Muhammed Nawaz* (2004 PLD SC 489)

9. Even otherwise, to consider whether it would be appropriate for the Federal Government to initiate such a scheme for the PQA on the same lines as the KPT scheme this court appointed a Commission as mentioned above to consider whether it would be in the best interests of PQA to initiate such a scheme which after thorough examination and hearing submitted its report. It would be conducive to reproduce the recommendations of the Report of the Commission dated 28<sup>th</sup> July 1999, which read as under:

#### RECOMMENDATIONS

- a. *A scheme like KDLB is unworkable and unthinkable as it has failed worldwide and made Karachi the most expensive port in the region. Hence same should not be extended to Port Qasim.*
- b. *The dock workers unregistered and at Port Qasim are both unregistered and unqualified and are not fully representative of labour and 1157 workers are in excess to requirements and every effort should be made to reduce the Dock Labour at Port Qasim.*
- c. *The Port Qasim Authority/Government of Pakistan are not liable in the present case as none of the workers are employees of the port or the Federal or Provincial Governments.*
- d. *QICT being a fully automated terminal is not obliged to use any of the dock workers working for various CHCs at the Port of Qasim.*
- e. *PQA is not liable/responsible for any of the registered with the port.*
- f. *CBA (Petitioner Union) to share the attendance allowance of Rs.48/- per day, medical benefits, bonus, shoe allowance, R/W*



fare etc. with all the workers employed by the CHC companies including the members of Respondent No. 13. The CBA represents unregistered/ registered dock workers whosever is and there is no question registered/unregistered dock workers at Port Qasim. Other workers unions of Port Qasim plant Vacuumdors and Hoppers, Ware Stitchers, Loading/Unloading by road, cleaning and maintenance staff are not entitled to enjoy the benefits of the welfare scheme for dock workers at Port Qasim.

g. CHCs should, with the help of Port Qasim Authority, reduce the number of workers and employees, cut down over time, introduce innovative schemes to accelerate production hours. FQA, CHC and the Registrar of Trade Union to work together to reduce the number of Unions at Port Qasim.

h. CBA agreements to be tailored to increase productivity at the Port and ban fresh recruitment and improve quality of Labour.

10. The commissioners submitted the report to this court which vide order dated 05.05.2009 held as under:-

*"After hearing learned counsel at some length and reviewing order of this Court dated 12.02.1998, we have reached to the conclusion that the above petition was disposed of by consent and Mr. Justice (Rtd) Zahoorul Haq and Admiral (Rtd) Wali Khan were appointed as Commissioners in the above two petitions to settle the dispute between the parties and it was also made mandatory that the provisional or final report of the Commissioners may be submitted within time frame indicated.*

*Mr. Shafiq Qureshi for the petitioners submits that he has filed objections in the report of the Commissioners whereas Mr. Meludi learned counsel for respondent No.3 has filed CMA No. 1512/2002 asking for the implementation of the said report of the commissioners. As that it may, we are of the opinion that this Court has disposed of the petitions by asking the commissioners to submit the report and it is not mentioned in that order anywhere that such report would again be examined by this Court to indicate the objections or comments of the parties.*

*We will therefore dispose of the objections and the application with direction that the learned parties to take any action they want on the basis of this report including contesting for its implementation before the relevant authorities or file an appeal or revision or seek any other remedy against the provision of this report before the concerned authorities. They may if they so desire even file a petition before this Court, which will be decided on its own merits. The objections and the application are disposed of in the above terms." (bold added)*

11. While referring to the above order of this Court, learned counsel for the petitioners submitted that this Court had allowed the Union to approach this Court again by preferring the instant petition which shall be decided on its own merits.

12. It is quite apparent from the recommendations of the Commission as reproduced above that the decision to implement the scheme at PQA in the words of the Commission would severely damage the working of PQA especially in economic terms;

*"A scheme like KDLB is unworkable and unthinkable as it has failed worldwide and made Karachi the most expensive port in the region. Hence same should not be extended to Port Qasim".*

13. As such why would this court interfere with a matter which in essence is a policy matter which would severely damage the economic interests of PQA especially when the petitioners are not aggrieved parties and section 3 of the Act 1974 is not mandatory. In the past when the courts have embarked on such judicial activism it has on occasion lead to disastrous economic consequences for the country. We mention the setting aside of the Privatization of Pakistan Still Mills, the Requo Deiq case and the RPP case by way of a few examples. In terms of policy matters the court should exercise maximum judicial restraint and not transgress into the domain of the executive in policy making matters which is in conformity with our system of Governance which is based on the trichotomy of powers.

14. When learned counsel for the petitioners was confronted with the query whether this Court can interfere in policy decisions, unless it is shown that, such a policy decision is the outcome of arbitrary exercise of power, mala fides, patently illegal or manifestly unreasonable or demand that the court dictate to the Government what policies to make and in what terms, he was unable to come up with a satisfactory response. In the case of **Abdul Hameed and others v. Water and Power Development Authority through Chairman Lahore and others** (2021 SCMR 1230), it was held by the Apex Court that the roles of each organ



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of the State are defined within the Constitution of the Islamic Republic of Pakistan, so also in different laws. A transgression of those roles by one organ would amount to the usurpation of the power of another, which would be against the spirit of the Constitution of the Islamic Republic of Pakistan. It is not the role of the Courts to interfere in policy decisions, unless it is manifest that, such policy decisions are the outcome of arbitrary exercise of power, mala fides, patently illegal or manifestly unreasonable and in this case none of the above has been pointed out as the Government has refrained from making such a policy.

15. In the case of Dossani Travels (Pvt) Ltd. vs. Messrs Travels Shop (Pvt) Ltd (PLD 2014 SC 1), it was held as under:

*"Besides on the task of allocating such quotas and making arrangements for Hajj fell within the policy making domain of MORA and in absence of any illegality, arbitrariness or established malafides, it was not open for the learned High Court to annul the policy framed by the competent authority"*

16. Likewise, in the case of Government of Khyber Pakhtunkhwa vs. Saeed ul Hassan and others (2022 PLC (CS) 164), it was held as under:

*"As noted above, executing policy making is not the domain of the High Court in the scheme of the Constitution and, is the prerogative of the executive to ascertain on the basis of its need, requirement, available resources and fiscal space, which posts it wishes to keep and which it wishes to abolish. Separation of powers is a well entrenched principle of jurisprudence which requires that the court cannot step into the shoes of the Executive."*

17. With regard to the question of discrimination and unequal treatment under Article 25 of the Constitution we find that the status of the dock workers at KPT are on a different footing as the dock workers at PQA are employed by other companies and not directly with the PQA and as such we find no violation of Article 25 especially when the decision to be made, or not to be made, as the case may be, is a policy one.

18. In the case of The Commissioner Inland Revenue V Markotex (Pvt) Limited (PLD 2024 SC 1168) it was held as under;

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*"In complex economic matters, the best solutions are not easily discernible, the wisdom of any choice may be debated or criticised but mere errors of policy judgment are not subject to judicial review. Only clear and definite violations of fundamental rights or other institutional provisions warrant judicial intervention. The Legislature and executive branches of the State are entitled to make pragmatic adjustments which may be called for by particular circumstances. Courts cannot strike down an economic policy decision taken by them merely because they feel that another policy decision would have been fairer, wiser or more scientific or logical. It is for the legislature and not the courts to balance the advantages and disadvantages of various economic concerns. Therefore when examining the constitutionality of fiscal laws on the touch stone of fundamental rights to equality before the law, courts should exercise greater restraint and extend more deference to legislative judgment than they do with laws concerning civil and political rights". (bold added)*

19. For the foregoing reasons, we find the petition not maintainable and dismiss the same. The Federal Government, may however, make such a scheme for PQA if it deems it appropriate.