

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Before:  
Ahmed Ali M. Shaikh, CJ  
Yousuf Ali Sayeed, J

CP No.D-1501 of 2020

Fresh Case

1. For orders on office objections No.14, 18 and 26
2. For orders on Misc. No.6817/2020
3. For hearing of main case

27.09.2021

Mr. Jan Muhammad Khaskheli, Advocate for the petitioner.

**AHMED ALI M. SHAIKH, CJ.**- Through instant Petition, Petitioner seeks following relief(s):-

“1. That this Honorable court may be pleased to declare the Sindh Shaheed Recognition and Compensation Act, 2014 (Sindh Act No.XVI of 2014) as inconsistent and in derogation of fundamental rights and is unilsamic and in violation of verse of Holy Quran and Hadith and is thus null, abinitio void, inoperative, ultra vires, of no legal effect and not binding on the petitioner.

2. That or in alternate this Honourable court issue the direction to the government to make the necessary amendments in the Sindh Shaheed Recognition and Compensation Act 2014 predominantly in section 2 subsection (f) by inserting words regarding any person who sacrifices his life by serving nation and performing his legitimate duties and dies as an unnatural death such as accidents, assaults by wrongdoers, muggers, thieves, dacoits, criminals or is killed by security duties by solders at borders etc. are also “Shaheeds”.

3. The costs of this petition may be awarded to the petitioner.

4. Any other relief which this Honourable Court may deem fit and proper may be granted to the petitioner.”

2. Brief facts as narrated in the memo of petition are that Mushtaque Ahmed (the “**Constable**”), Petitioner’s husband, serving as a Police Constable was deployed in SSU Karachi. On 04.3.2015 while performing security duties in a high alert zone of Karachi he met with a fatal accident. During funeral he was given full protocol of “Shaheed” (Martyr) and a compensation of Rs.40,000.00 was also paid to his legal heirs. Grievance of the Petitioner is that though the Constable lost his life

in line of duty, he was not officially declared as Shaheed in terms of Section 2(f) of the Sindh Shaheed Recognition and Compensation Act, 2014 (the “**Act of 2014**”). The Petitioner approached the high-up in the department and went from pillar to post to declare the Constable as Shaheed but to no avail.

3. Learned counsel for the Petitioner submits that as the Constable, member of a law enforcement agency, lost his life while performing official duties be declared “Shaheed” as defined in Section 2(f) of the Act. He further submitted that the failure of the Respondent to declare the Constable as Shaheed is discriminatory and violates the fundamental rights of the Petitioner. According to him the Act being repugnant to the Holy Qur’an and Hadith be declared against the Injunctions of the Islam.

4. Heard learned counsel for the Petitioner and perused the material available on record. Before proceeding further, we deem it appropriate to reproduce hereunder the Section 2(f) of the Act of 2014:-

“2(f) “Shaheed” means a person who offered sacrifice of his life in line of duty in counter terrorism or becomes victim of any of terrorism operation or targeted and killed by terrorists group and declared Shaheed in the manner prescribed by Government.”

5. A bare reading of the aforesaid Section conjunctively with the preamble of the Act of 2014 provides that the legislature has passed the said Act to honor and recognize the services of persons who sacrifice their lives in act of terrorism while performing duty and to provide compensation to their legal heirs and the Provincial Government could declare those persons as Shaheed who offered sacrifice their lives in line of duty in counter terrorism or becomes a victim of an act of terrorism operation or targeted and killed by the terrorists group. The Act of 2014 further defines “persons” (subsection (e) to Section 2) as a government servant posted to or serving under Government and includes personnel of Sindh Police Department or official of any law enforcement agency transferred to serve under or working for the Government. Admittedly, the Constable met with an accident while was on duty, but could not be said to have sacrificed his life in the line of duty in counter terrorism or has been a victim of an act of terrorism operation or even targeted and killed by terrorists group. A compensation of Rs.40,000.00 was also given the his legal heirs. In the given facts and circumstances, it is quite clear

that the case of the Constable is quite distinguishable with the case of those persons as defined in subsection (f) to Section 2 of the Act of 2014.

6. Be that as it may, it is worthwhile to mention here that earlier in January, 2019, Petitioner filed CP No.D-502 of 2019 seeking almost identical relief(s) as in the instant Petition except the prayer clause (a). The said Petition was disposed of in terms of Order dated 10.01.2020 by a learned Division Bench of this Court in following terms:-

“6. In view of the above, by consent, this petition is allowed with direction to the competent authority of the respondent-police department to take decision afresh as to whether Constable Mushtaque Khaskheli embraced Shahadat on 04.03.2015 or his case does not fall under the criteria for Shaheed as per the Sindh Shaheed Recognition and Compensation Act-2014. The aforesaid exercise shall be completed by a speaking order within a period of one month from the date of receipt of this order after hearing the petitioner.”

7. However, as the aforesaid directions of this Court were not complied with within stipulated period, the Petitioner filed a contempt application, which was disposed of vide order dated 14.01.2021 in following terms:-

“This petition was disposed of on 10.01.2020 whereby police department was directed to take a fresh decision as to whether Constable Mushtaque Khaskheli embraced Shahadat on 04.03.2015 or his case does not fall under the criteria of Shahadat as per Sindh Shaheed Recognition and Compensation Act, 2014. Today learned Assistant Advocate General has relied upon compliance report already filed through a statement dated 15.01.2021 whereby it has been held that case of petitioner does not fall within the frame of Act of 2014. Hence, since compliance of the order of this Court has been made, no further proceedings could be initiated in this petition which has already been disposed of. The statement alongwith report is taken on record subject to all just exceptions and no further orders are required.”

8. With regard to submission of the learned Counsel declaring the Act of 2014 as repugnant to the injunction of Islam, the Holy Qur’an and Hadith is concerned, under the Article 203-D, Chapter 3A “**Federal Shariat Court**” (the “**Shariat Court**”) of the Constitution, it is the exclusive domain of the Shariat Court to examine and declare any provision of any statute as repugnant to the Injunctions of Islam, the Holy Qur’an and or Sunnah of the Holy Prophet (PBUH). Additionally, sub-clause (1A) to Article 203-D provides that after examination of any law or provision of

law under clause (1), if such law or provision of law appears to it to be repugnant to the Injunctions of Islam, the Court shall cause to be given to the Federal Government in the case of a law with respect to a matter in the Legislative List or to the Provincial Government in the case of a law with respect to a matter not enumerated in the said List, a notice specifying the particular provisions that appear to it to be so repugnant, and afford to such Government adequate opportunity to have its points of view placed before the Court. Sub-clause (2) to the Article 203-D specifies that if the Court decides that any law or provision of law is repugnant to the Injunctions of Islam it shall set out in its decision the reasons for its holding that opinion and the extent to which such law or provision is so repugnant and specify the date on which the decision shall take effect.

9. Additionally, Article 203-G of the Constitution provides bar of jurisdiction that no Court or tribunal, including the Supreme Court and a High Court, shall entertain any proceedings or exercise any power or jurisdiction in respect of any matter within the power or jurisdiction of the Court. In this context, in the case of *Majmua-tun-Noor "Hajj" and "Umrah" service versus Federation of Pakistan* (2019 CLC 1206), a Division Bench of this Court while deciding a Petition challenging the Hajj Policy, 2018 and placing reliance on the dicta laid down by the Honourable Supreme Court in the case of *Dossani Travels (Pvt.) Ltd. Versus Messrs Travels Shop (Pvt.) Ltd* (PLD 2014 SC 1), has observed that:-

"10. As such, we are of the view that it is not within the purview of this Court to make any determination in these proceedings as to whether law, provision of law or indeed a policy for that matter is repugnant to Islamic Injunctions, and we are confined in our scope to the specific parameters delineated in Article 199, resting on a violation of a fundamental rights, which is evidently not a ground of challenge in this case. Accordingly, we find that the Petition is not maintainable."

10. Consequently, as far as prayer clause (1) of the Petition that the Act of 2014 be declared repugnant to the Holy Qur'an and Hadith is concerned we are clear in our mind that the same does not fall within the parameters of this Court under Article 199 of the Constitution in view of the bar contained under Article 203-G of the Constitution and the Judgment in the case of *Dossani Travels (Pvt.) Ltd.* (supra). The Petition is not maintainable on this score alone.

11. So far as the prayer that alternatively direction be issued to the Government to make necessary amendment in the Act, more specifically in Section 2(f) is concerned the same too cannot be entertained. Under the doctrine of “trichotomy of powers” between the Legislature, the Executive and the Judiciary, it is well settled that the legislative function does not fall within the domain of this Court and is the sole function of the Parliament/Assemblies. Following the said doctrine and the enunciations of the Honourable Supreme Court of Pakistan this Court cannot step into the shoes of the Legislature. Reference in this regard can be made to the cases of Government of Khyber Pakhtunkhwa versus Saeed-ul-Hassan (2021 SCMR 1376) and Jurists Foundation versus Federal Government (PLD 2020 SC 1). In the former cited case, the Honourable Supreme Court observed that:-

“Discretionary Jurisdiction under Article 199 of the Constitution cannot be exercised in a vacuum. It must be grounded on a valid basis of violation of specific and enforceable legal or constitutional rights. The discretion must be exercised in a structured and calibrated manner with due regard to parameters put in place by the Constitution as well as by this Court.”

In view of the foregoing, we have no hesitation to hold that the Petitioner has no case at all and Petition alongwith pending application is dismissed.

Judge

Chief Justice