

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P No.D-5366 of 2022
(Hamza Faheem v Federal of Pakistan & others)

Date	Order With Signature Of Judge
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Before:-

Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order 28.08.2025

Mr. Farhatullah, advocate for the petitioner.
Ms. Wajeeha Mehdi, Assistant Attorney General.

ORDER

Muhammad Karim Khan Agha, J The petitioner requests that this court, in the interest of justice, set aside the termination letter dated January 18, 2022, and reinstate him into service. He also asks the court to order the respondent to properly decide his appeal and grant any other relief deemed appropriate.

2. A Pakistan Navy Cadet, commissioned on January 1, 2021, was terminated from service on January 18, 2022, on disciplinary grounds. The petitioner claims this dismissal is unlawful and is challenging the jurisdiction of the naval authorities. The case stems from an incident on a flight where a passenger accused the petitioner and his companions of stealing a wallet and foreign currency. Despite a search and subsequent discovery of currency by Airport Security Forces (ASF), nothing was recovered from the petitioner. He was later subjected to what he describes as illegal detention and torture by Naval Intelligence (N.I.) officers, who coerced him into signing a confession.

3. The petitioner's counsel argues that his termination is illegal because the Judge Advocate General of the Navy lacked the legal authority to initiate criminal proceedings for an incident that occurred in a civilian setting, as per Navy Regulations. He was not given a proper trial, a personal hearing, or a chance to present witnesses. The confession was obtained under duress and has no legal value. The actions of the N.I. officers violated his right to a fair trial under Article 10-A of the Constitution of Pakistan. The petitioner has appealed to the Chief of the Naval Staff but has not received a response. He is asking the court to set aside his termination, reinstate him, and direct the naval authorities to properly decide his appeal. He argues that a constitutional petition is the only adequate remedy, as he is challenging the very jurisdiction of the naval authorities to take action against him.

He prayed for allowing the petition. On the maintainability of the petition, learned counsel argued that the Supreme Court has ruled that the constitutional petition is maintainable, rejecting the respondents' objection based on Article 199(3). The Supreme Court reasoned that the restrictions in Article 199(3), which bar court intervention in matters concerning members of the armed forces, do not apply where malafide is pleaded. Therefore, the case falls outside the scope of Article 199(3) of the Constitution. He placed reliance in the case of MUHAMMAD AQIB SHAHID VS. CHIEF OF THE NAVAL STAFF, NAVAL HEADQUARTERS, ISLAMABAD, and 6 others, 2011 PLC(CS) 321.

4. We have heard the learned counsel for the petitioners on the maintainability of the petition and perused the record with this assistance.

5. The Constitution petition is not maintainable against the service matters of Pakistan's Armed Forces due to the constitutional bar in Article 199(3) of the Constitution of Pakistan, which prevents High Courts from issuing orders regarding the terms and conditions of service or actions taken in relation to Armed Forces members. This constitutional provision aims to maintain discipline within the forces by restricting judicial interference in their internal affairs. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of Ex. Lt. Col. Anwar Aziz (PA-7122) vs. Federation of Pakistan (PLD 2001 SC549). We, therefore, in the 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, pursuant to their applicable laws. However, if the appeal of the petitioner is pending, the same shall be decided within three months after hearing the petitioner.

6. In the light of the foregoing, we are of the view that the case of petitioner squarely falls within the ambit of the ouster clause of Article 199(3) of the Constitution, therefore, there is a bar of jurisdiction of this Court from entertaining the instant Constitutional Petition, which is accordingly dismissed.

HEAD OF CONST. BENCHES

JUDGE