

IN THE HIGH COURT OF SINDH, KARACHI

Present

**Mr. Justice Aqeel Ahmed Abbasi**

**Mr. Justice Arshad Hussain Khan**

Const. Petition No.D-1379 of 2013

Haji Gul Ahmed. ....Petitioner

Versus

Federation of Pakistan and others.....Respondents

Date of hearing : 07.12.2017

Date of Order : 07.03.2018

Petitioner Haji Gul Ahmed present in person.  
Mr. Mir Hussain, Asstt. Attorney General.

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**ORDER**

**Aqeel Ahmed Abbasi, J:** Instant Constitution Petition was disposed of vide order dated 17.02.2014, thereafter, petitioner filed two applications being CMA No.3892/14 under Section 151 CPC and CMA No.5036/14 (Contempt), which were disposed of vide order dated 29.04.2014 in the following terms:-

"29.04.2014

*Petitioner Haji Gul Ahmed is present in person.*

*Mr. Dilawar Hussain, Standing Counsel.*

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*This petition was filed with the prayer that the petitioner wants certain words to be included in the Oath, which words were included in the Oath as per the letter No.CII's U.A. No.1(77)/2013-Law-CII/611 dated 20.01.2014 and the petition was disposed of vide order dated 17.02.2014. These two applications have been*

*filed by the petitioner stating therein that the said words have not been filed by the petitioner stating therein that the said words have not been included in the oath. This aspect of the petitioner is found to be incorrect on the basis of the order already passed on 17.02.2014 and as per the above referred letter, certain words have been included in oath. Hence, these two applications are found to be wholly misconceived and not maintainable and are accordingly dismissed.”*

2. Petitioner still filed two more applications CMA No.34549/14 (U/S 151 CPC) and 52/2015 (contempt). On 05.01.2015, when aforesaid applications were fixed for orders in Court, Divisional Bench of this Court instead of issuing notice of the contempt application to the respondents/alleged contemnor was pleased to issue notice to the DAG to clarify the wording of Oath as mentioned in order dated 07.02.2014, on which date, the petition was disposed of. Thereafter, petitioner filed applications being CMA No.2709/15 (Stay) and CMA No.34549/14 (U/S 151 CPC). Record shows that petitioner continued to file various application including CMA No.38922/15 (Contempt), which was dismissed vide order dated 30.12.2015. Similarly, another CMA No.34549/2014 under Section 151 CPC was also dismissed on the same date. Petitioner filed yet another application i.e. CMA No.361/16 under Section 151 CPC, on which notice was issued on 24.02.2016. However, vide detailed order dated 07.04.16, said application was also dismissed, the relevant finding of order passed by the Bench of the then Hon'ble Chief Justice is reproduced hereunder:-

*“ Heard the petitioner and the Addl. Attorney General and perused the record. Pursuant to the order made by the Apex Court, as the petitioner intends to declare the oath of the office of Hon'ble Judges of High Courts and Supreme Court unconstitutional and violative of the Shariah, such a prayer of the*

*petitioner, cannot be answered by the Courts, whose judges have taken oath in the manner contrary to the assertions of the petitioner, therefore the only possibility available to the petitioner is to approach the legislature for making the changes desired by him.*

*We being mindful of the fact that the petitioner need to appraise himself of the fact that the Constitution does not require a judge of the Superior Courts necessarily to be a Muslim, dismiss the instant application.”*

3. Petitioner being aggrieved and dis-satisfied by disposal of aforesaid application instead of filing an appeal filed an application being CMA No.9869/17 for review along with another application CMA No.1379/17 (U/S 151 CPC), which was dismissed as not pressed, whereas, notice of CMA No.9869/17 (Review) was issued to the learned DAG. Petitioner filed another application CMA No.24481/17 under Section 151 CPC with the request that CMA No.9869/17 seeking review of order dated 07.10.2017 may be heard by the same Hon'ble Judge of this Court. Accordingly, vide detailed order dated 07.10.2017, CMA No.9869/17 (Review) was also dismissed by the learned Single Judge in the following terms for being not maintainable:-

“07.10.2017

*Haji Gul Ahmed, Petitioner present in person.  
Mr. Muhammad Shoaib Mirza, Assistant Attorney  
General.*

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*The instant revision application has been filed against an order dated 07.04.2016 passed by Divisional Bench of this Court (comprising of myself and My Lord Mr. Justice Sajjad Ali Shah, the then Chief Justice). Since Mr. Justice Sajjad Ali Shah has been elevated to Honourable Supreme Court of Pakistan, therefore, vide Office Note dated 01.04.2017, the Honourable Chief Justice directed the office to place the instant matter before me.*

*Through the instant revision application, the Petitioner has reiterated his prayer that the recommendations of the Islamic Ideology Council, which were produced before this Court in the form of a letter*

*under Reference No.1(77)/2013-Law-CII/661, where the Council having come to know that the Law Commission proposed an amendment with regard to the text of the Oath taken by the Parliamentarians, as well as, Members of the Provincial Assemblies should be implemented in respect of all Oaths taken under the Constitution.*

*The Petitioner present in person submits that text of the Oaths contained in the Third Schedule of the Constitution of Islamic Republic of Pakistan, 1973 is contrary to the injunctions of Islam and by referring to Article 227 of the Constitution prays that since the Constitution requires all existing laws to be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah, appropriate amendments in the text of Oaths contained in the Third Schedule should be made through an order of this Court.*

*The crux of the Petitioner's arguments is that this Court itself is competent to declare the afore-mentioned Oaths violative of Article 227 and the Court is competent to pass orders to that effect declaring the text void. In support of his contentions, he has placed reliance on judgments rendered in the case of Pakistan and others v/s. Public at Large and others (PLD 1987 SC 304), as well as, Muhammad Sarwar and another v/s. The State (PLD 1988 F.S.C. 51).*

*The learned Assistant Attorney General submits that the prayer sought by the Petitioner as to declaration of certain parts of the Constitution on the ground that the same are violative of the injunctions of Islam could not be granted under Article 227. He clarified by referring the above quoted case law that in both of the cited cases, Courts being custodian of the Constitution used their powers to declare certain laws being repugnant to the injunctions of Islam, Courts have not declared that any part of the Constitution itself is violative. In the latter case, it is for the legislature to bring amendments in the Constitution as per the mechanism laid down in the Constitution itself.*

*Heard Petitioner in person, as well as, learned Assistant Attorney General. The Petitioner seemingly cannot distinguish between "law" and Constitution. Though Article 227 requires laws to be in conformity with the injunctions of Islam and Courts at various occasions has made declarations to hold any law or a provision thereof to be violative of Article 227, with regards the amendments sought in the Constitution itself, Courts being bound and custodian of the Constitution, which is the metal from which all the laws are*

*extruded, cannot itself make amendments in the Constitution. Taking guidance from the Apex Court's Judgment in C.P.No.345-K of 2010, where in the same circumstances Court directed the Petitioner, (who was seeking declaration of the Oath of Office of Judges of the Superior Courts to be un-constitutional) to approach the Legislature for the redressal of his grievances. Courts being custodian of the Constitution, and each and every part thereof, cannot make any declaration of the nature sought by the Petitioner, which is the function of the Legislature, who upon the desires of their constituencies can bring such amendments in the Constitution following the mechanism provided by the Constitution itself. The prayer sought by the Petitioner exceeds the domain of this Court, thus cannot be granted, and these are the same reasons on account of which orders dated 07.04.2016 were passed.*

*Accordingly, the instant revision application having no merit is dismissed."*

4. It is surprising to note that petitioner filed yet another application CMA No.33707/17 under Section 151 CPC, wherein, the petitioner has reiterated the same grounds and prayed for orders by this Court for the same relief, which was already declined to the petitioner while dismissing instant petition and the aforesaid applications filed by the petitioner from time to time. Petitioner before us has argued that since the required amendment in the Oath as prescribed in the Constitution of Islamic Republic of Pakistan, pursuant to recommendations of Islamic Ideology Council, has not been made, therefore, directions may be issued to the Federal Law Ministry in respect of applications filed by the petitioner on 19.08.2016 and 21.09.2016, requiring the parliament to make necessary amendments in the Constitution relating to Oath. It is regretted to note that the constitutional jurisdiction of this Court is being abused by individuals having no knowledge either of the Constitution of Islamic Republic of Pakistan or the legal procedure, whereby, while establishing the locus standi, valid cause of action to invoke constitutional jurisdiction, and to

justify the relief being sought under Article 199 of the Constitution, frivolous petitions are filed, whereas, after dismissal or final disposal of such petitions, equally frivolous and misconceived applications are filed, which consumes considerable precious time of the Court at the cost of large number of other genuine cases fixed in Court. Once instant petition was dismissed by a Divisional Bench of this Court, the petitioner could have either filed an appeal, if aggrieved by such order, before the Hon'ble Supreme Court or could have filed fresh petition in case of any subsequent cause of action, which could have arisen after disposal of the petition. However, petitioner chose to file application for contempt of Court as well as application seeking review/revision of the orders passed by the Divisional Bench of this Court on such application, which have already been dismissed from time to time. However, the petitioner, instead of filing any appeal against such order(s) continued to file similar applications, whereas, the present application under Section 151 CPC also seeks somewhat similar relief, which has already been declined through aforesaid orders passed in the instant matter. We see no merits in the listed application, which besides being misconceived and frivolous, amounts to abuse the process of law, as the same could not have been filed after final disposal of instant petition and dismissal of similar applications by this Court vide various orders as referred to hereinabove. Accordingly, listed application is dismissed with the cost of Rs.5000/- (Rupees Five Thousand Only) to be deposited in the account of High Court Clinic Fund. Office is directed not to entertain any application of the petitioner in the instant matter without permission of the Court.

**J U D G E**

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