

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

Mr. Justice Aftab Ahmed Gorar  
Mr. Justice Adnan-ul-Karim Memon

## **Constitutional Petition No. D-5391 of 2021**

Sajid Akbar  
petitioner through : Syed Shahid Mushtaq, advocate

Respondents through : Nemo

Date of hearing  
& order : **03.02.2022**

### **ORDER**

Through the instant petition, the petitioner has called in question the vires of termination of his service by the respondent No.3 Chief of Naval Staff, Naval Headquarters Islamabad, vide letters issued in March 2009; and, secondly in 17<sup>th</sup> July 2009 on account of misconduct. Per learned counsel, no order in writing was issued to him. Thereafter he requested for furnishing certain documents but the same was not provided to him despite his best efforts. Per learned counsel, the petitioner moved an application for reinstatement in service in August 2009, but the same was rejected vide letter dated 17.11.2009 by the Judge Advocate General Naval Headquarters Islamabad, thereafter he approached the respondent- Chief of Naval Staff, Naval Headquarters Islamabad, from time to time but no avail. An excerpt of the letter dated 17.11.2009 is reproduced as under:

*“A. Your application No.Nil dated 27 Aug 09.  
Your application for reinstatement in service has been given due consideration but the same has not been acceded to by the competent authority.”*

Learned counsel further submitted that respondent vide letter dated 18.7.2009 informed the petitioner about his right to file an appeal against the sentence through the Naval Court of Appeal within 60 days, however, he preferred another application to the Chief of Naval Staff for consideration of his case and his dismissal from service may be converted into discharge, but no reply was given compelling him to move various applications to the concerned authority for furnishing certified copies of the board of inquiry vide letters dated 22.04.2014, 28.3.2016, 01.04.2017, 07.06.2018, 06.04.2019 and 19.6.2021. Learned counsel for the petitioner on the issue of maintainability has relied upon the statement dated 25.11.2021 and the judgments of the Hon’ble Supreme Court of Pakistan rendered in the cases of Federation of Pakistan and others v. Raja Muhammad Ishaq Qamar and another, PLD 2007 498, and other judgments reported as PLD 2010 SC 61, PLD 2015 SC 401 and 2014 SCMR 1530 and argued that this petition is maintainable on the premise that orders passed by the respondents were Coram non-judice and without jurisdiction as such this Court can entertain a constitutional petition under Article 199(3) of the Constitution of the Islamic Republic of Pakistan, 1973.

We asked the learned counsel for the petitioner to satisfy this Court about laches involved in this petition for the reason that the alleged cause of action accrued to the petitioner in the year 2009 when he was sentenced by the competent authority of Armed Forces and his service was dispensed with accordingly and he presented this petition before this Court on 23.8.2021 after 12 years. Learned counsel for the petitioner replied to the query, relied upon various documents attached to the memo of the petition, and reiterated his submissions as discussed supra with the addition that he lastly moved an application to the Chief of Naval Staff, Naval Headquarters Islamabad, in June 2021 which has not been replied and thereafter he has approached this Court.

The case of the petitioner is that he was discharged from service by the Board of Inquiry of Pakistan Navy on certain allegations of misconduct and a sentence was awarded to him in terms of Pakistan Naval Regulations Rule 258 sub-para (20). Finally, his service was dispensed with. On perusal of record, it appears that the petitioner preferred Appeal before the Competent Authority, which was dismissed on 17.11.2009.

It is an admitted fact that the Petitioner has remained a Member of the Armed Forces and as such his service was governed by the Ordinance, Rules, and Regulations of the Pakistan Navy. For the sake of brevity, we would like to reproduce the relevant portion of Article 199(3) of the Constitution as follows:-

**“(3). An order shall not be made under clause (1) on the application made by or in relation to a person, who is a member of the Armed Forces of Pakistan, or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law.”**

The present petition is barred under Article 199 (3) of the Constitution of the Islamic Republic of Pakistan, 1973. Chance was given to the Petitioner vide order dated 22.11.2021 to satisfy this Court on the maintainability of the present petition but he has failed to convince us on the maintainability of the petition for the reason that the service matters of the Pakistan Military Personnel cannot be entertained under Article 199(3) of the Constitution. Besides that, the explanation offered by the petitioner on account of laches is also not satisfactory because of the orders passed by respondent No.3 against the petitioner in 2009; and, his appearance in Court in the year 2021. Thus, his case also squarely falls within the ambit of the doctrine of laches.

Touching the jurisdiction of this Court in the present matter, we are cognizant of the fact that Article 199 (3) of the Constitution stipulates a bar to jurisdiction insofar as the matters about the service of any member of Armed Forces of Pakistan are concerned. Reference in this regard may be made to the decision given in the case of Muhammad Mushtaque vs. Federation of Pakistan, 1994 SCMR 2286 wherein it has been held that:-

***“The High Court was approached under Article 199 for grant of a relief under Sub-Article (1) thereof. The relief regarding Fundamental Rights is included in Sub-Article (1), which is clearly barred under Article 199 (3) with reference to Sub-Article (1) thereof. The High Court had no jurisdiction in the matter.”***

We, therefore, in 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 Pakistan Armed Forces in service-related matters according to their applicable laws.

Principally, this Court has jurisdiction under Article 199 (1)(c) to issue directions to any person, including Provincial/Federal Government and any entity, company, and authority-owned and controlled by the Provincial/Federal Government, however, this Court under Article 199 (3) of the Constitution cannot entertain the services issues of Armed forces as the Article 199 (3) has provided complete protection to the decisions of the armed forces on service matters except the exceptions provided by the judgments of the Hon'ble Supreme Court of Pakistan from time to time, which is not the case in hand.

Coming to the issue of award of sentence to the petitioner under the Pakistan Naval Regulations and Rules, the parameters authoritatively settled by the Honourable Supreme Court to examine the vires of a finding/sentence recorded by a Court Martial provide limited space to examine the hypothesis of any mala fide lurking behind the prosecution or any judicial flaw in holding of the Court Martial that may be viewed as Coram non-judice or without jurisdiction and in so doing this Court shall not attempt to search for a contra view of the evidence, competently recorded during a Court Martial. On the aforesaid proposition, we are guided by the decision of the Honourable Supreme Court in the cases of Ex-Capt. Muhammad Akram Khan Vs. The Islamic Republic of Pakistan through the Secretary to the Government of Pakistan, Ministry of Law and Parliamentary Affairs, Islamabad, and another, **PLD 1969 SC 174**, The State Vs. Zia-urRehman and others, **PLD 1973 SC 49**, Brig. (Rtd.) F.B. Ali and another Vs. The State, **PLD 1975 S.C. 506**, Sh. Karamat Ali Vs. The State, **PLD 1976 SC 476**, Federation of Pakistan Vs. Malik Ghulam Mustafa Khar, **PLD 1989 S.C. 26**, Secretary Ministry of Religious Affairs and Minorities and others Vs. Syed Abdul Majid, **1993 SCMR 1171**, Mrs. Naheed Maqsood Vs. Federation of Pakistan through Secretary, Ministry of Interior, Govt. of Pakistan Islamabad and 4 others, **1999 SCMR 2078**, Ex-Lt. Col. Anwar Aziz Vs. Federation of Pakistan through Ministry of Defence Rawalpindi and others, **PLD 2001 SC 549**, Mst. Tahira Almas and another Vs. The Islamic Republic of Pakistan through Secretary, Ministry of Interior, Islamabad and another, **PLD 2002 SC 830**, Mushtaq Ahmed and others Vs. Secretary Ministry of Defence through Chief of Air and Army Staff and others, **PLD 2007 S.C. 405**, Federation of Pakistan and others Vs. Raja Muhammad Ishaque Qamar and another, **PLD 2007 S.C. 498**, Ghulam Abbas Niazi Vs. Federation of Pakistan and others, **PLD 2009 S.C. 866**, Federation of Pakistan through Secretary Defence and others Vs. Abdul Basit, **2012 SCMR 1229**, Rana Muhammad Naveed, and another Vs. Federation of Pakistan through Secretary M/o Defence, **2013 SCMR 596**, Ghulam Abbas Vs. Federation of Pakistan through Secretary, Ministry of Defence and others, **2014 SCMR 849**, District Bar Association Rawalpindi and others Vs. Federation of Pakistan and others, **PLD 2015 S.C 401**, Ex-Lance Naik Mukarram Hussain and others

*Vs. Federal Government, M/o Defence through Chief of the Army Staff and others, 2017 SCMR 580), Ex-Gunner Muhammad Mushtaq and another Vs. Secretary Ministry of Defence through Chief of Army Staff and others, 2015 SCMR 1071 and Said Zaman Khan and others Vs. Federation of Pakistan, 2017 SCMR 1249.*

In view of the above, we are not inclined to entertain this Constitutional Petition under Article 199 of the Constitution due to the complete bar of jurisdiction as provided under Article 199(3) of the Constitution, as we do not see any exception i.e. Coram non-judice and without jurisdiction.

This petition is entirely misconceived and is dismissed in limine along with the pending application(s) with no order as to costs. However, the petitioner is at liberty to approach the proper forum under law.

Nadir\*

JUDGE JUDGE