

IN THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-6162 of 2020

Ghulam Shabbir Petitioner

V E R S U S

Province of Sindh and others Respondents

Date of hearing & order : 01.04.2021

Syed Imtiaz Ali Shah, advocate for the petitioner.

ORDER

Adnan-ul-Karim Memon-J. Through the instant petition, the petitioner is seeking to have the Order dated 30.07.2020 ("**Impugned Order**"), passed by Squadron Leader/Assistant Director, Housing AFOHS AHQ (Dett) New Malir, set aside and thereby praying for his reinstatement in service as Staff SDO (B&R) and restoration of all back benefits.

2. In a nutshell, the case of the petitioner is that during his service tenure, he was found involved in immoral activities, his such conduct was investigated by the Inquiry Officer on 29.7.2020 and communicated the findings to the Base Commander PAF Base, Malir, and on his instructions, a formal investigation was carried out by the Competent Authority on 30.07.2020, wherein he confessed all the accusations, thereafter his services were dispensed with on 30.07.2020 and was blacklisted AFOHS Complex, New Malir.

3. It is, inter-alia, contended by the learned counsel for the petitioner that the impugned order of dismissal from service based on "immoral activities" is illegal and discriminative, which is liable to be set aside. Per learned counsel, the petitioner was not given a fair opportunity of hearing and was dismissed from his service without issuing any Show Cause Notice or conducting any Domestic Enquiry and that he was condemned unheard. Learned counsel for the petitioner has argued that the instant petition is maintainable under the law as the Order passed by respondent No.3 is based on malafide, coram non-judice, and is without jurisdiction. The learned counsel further argued that the petitioner has served in the respondent- AFOHS AHQ (Dett) New Malir, Karachi, for 03 years with a

clean and unblemished service record. However, he was condemned on the ground of being involved in immoral activities, which is an unconstitutional act and in violation of the fundamental rights of the petitioner.

4. We have heard learned counsel for the petitioner on the maintainability of the instant petition under Article 199(3) of the Constitution of the Islamic Republic of Pakistan, 1973.

5. It is an admitted fact that the petitioner has remained in a civilian cadre in the Directorate of Housing Employee AFOHS AHQ (Dett) New Malir Karachi as Staff (SDO) B&R under the control of respondents No.2 & 3 and as such his service was governed by the Rules, and Regulations about the employees of AFOHS. Since the petitioner has arrayed the members of the Armed Forces as the party in the proceedings who passed the impugned order, thus their action falls within the ambit of Article 199(3) of the Constitution as follows:-

“(3). An order shall not be made under clause (1) on 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.”

6. 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.”

7. In the case of Ex. Lt. Col. Anwar Aziz (PA-7122) vs. Federation of Pakistan (PLD 2001 Supreme Court of Pakistan 549), it has been held that:

“This Court can interfere only in extraordinary cases involving question of jurisdictional defect when proceedings before that forum become coram non judice or mala fide. The matters relating to the Members of the Armed Forces or who for the time being are subject to any law relating to any of these Forces in respect of terms and conditions of service or in respect of any action taken in relation to him as Member of Armed Forces or as a person subject to such law, is barred by Article 199 (3) of the Constitution. Article 8 (3) of the Constitution also envisages that the provisions of this Article shall not apply to any law relating to members of the Armed Forces, or of the Police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them.”

8. We, therefore, while deciding this writ petition, in the exercise of the powers under Article 199 of the Constitution, have to be cognizant of Sub-Article (3) of the aforementioned Article, which envisages that no order shall be made concerning a person, who is a member of the Armed Forces, or in respect of any matter arising out of his service or in respect of any action taken concerning him as member of Armed Forces. 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 respondents, according to their applicable laws.

9. In the light of the foregoing, without touching the merits of the case, 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. Hence, the same is dismissed along with the pending application(s), however, the petitioner would be at liberty to avail his remedy as provided under the applicable laws.

JUDGE

JUDGE

Nadir*