

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D – 230 of 2012

Date	Order with signature of Judge
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Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Muhammad Iqbal Kalhoro

1. For Katcha Peshi :
2. For hearing of CMA No.1271/2012 :

Petitioner : Syed Qasim Hasan, through Syed Muhammad Akbar Advocate.

Respondent No.1 : Syed Mehdi Hasan, called absent.

Respondents 2 & 3 : Through Mr. Abdul Jalil Zubedi, A.A.G.

Date of hearing : 30.01.2015.

ORDER

NADEEM AKHTAR, J. – Through this Constitutional Petition, the petitioner has impugned the order passed on 17.11.2011 by a learned single Judge of this Court in Civil Revision Application No.215/2011 filed by him, whereby the same was dismissed.

2. On 20.01.2015, learned counsel for the petitioner sought time to satisfy us on the point of maintainability of this petition as we were of the view that the same was not maintainable on the ground that this Court cannot issue a writ against any of its Benches. The only submission that was made by the learned counsel was that since the impugned order is perverse and illegal, the same can be called in question under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. In support of this submission, he relied upon the cases of (1) Khan Mir Daud Khan and others V/S Mahrullah and others, PLD 2001 S.C. 67, (2) Qamar-ud-Din V/S Muhammad Din and others, PLD 2001 S.C. 518, (3) Abdul Razzak V/S Lal Bux and another, 2012 CLC 04 (Sindh), (4) Moulvi Shahzado Dreho V/S Syed Khurhssed Ahmed Shah and others, PLD 2012 Sindh 158, (5) Aamir Khalil V/S Government of Pakistan through Director General, A.N.F. Rawalpindi and 5 others, PLD 2004 Peshawar 251, (6) Muhammad Suleman V/S Wilayatullah Khan and 2 others, 1990 CLC 110 (Karachi), (7) Mubarik Ali Shah and another V/S Nazir Ahmed Shah and 10

others, 2000 CLC 892 (Lahore), (8) Hafiz Muhammad Qasim V/S Mst. Soorat Bibi and others, 2000 YLR 2606 (Lahore), (9) The Administrator General of Auqaf Government of Pakistan and another, 2001 CLC 218 (Lahore), (10) Muhammad Afzal through legal heirs and others V/S Riaz Mahmood, Additional District Judge, Lahore and 8 others, PLD 2004 Lahore 115, and (11) Faiz Ahmed and 23 others V/S Ahmed Khan and 7 others, PLD 2013 Lahore 234.

3. In all the cases cited and relied upon by the learned counsel for the petitioner the general and well-settled principles in relation to the revisional jurisdiction of High Court against the orders passed by the lower appellate Court have been discussed and reiterated. The learned counsel was unable to satisfy us as to how this petition under Article 199 is maintainable against the order passed by a learned single Judge of this Court. It is well-settled that no Bench of the High Court can issue a writ against another Bench of the same High Court, or for that matter against another High Court, and no writ lies either against High Court or the Supreme Court. This view expressed by us is fortified by the cases of Abrar Hassan V/S Government of Pakistan and another PLD 1976 SC 315, and Muhammad Imran V/S Peshawar High Court, Peshawar, through Registrar and two others 2011 PLC (C.S.) 1465.

4. In the case of Abrar Hassan (supra), the Hon'ble Supreme Court was pleased to hold *inter alia* that the policy of law that no writ will issue to a High Court and Supreme Court is based on sound principles ; and, if one Judge of a High Court were to issue a writ to another Judge under Article 199, the Judge to whom the writ is issued, may in exercise of the same jurisdiction nullify the writ. In the case of Muhammad Imran (supra), it was held *inter alia* by a learned Division Bench of the Peshawar High Court that Article 192 of the Constitution emphatically specify the constituents of a High Court, the Chief Justice and the Judges of the High Court ; it is well settled that each Judge of the High Court acts as High Court, and any direction or order by the Single Bench or for that matter by the Division Bench, would amount to its issuance against a Judge who is the component of a High Court ; the jurisdiction exercised by the High Court, whether in a Bench of a Single Judge or the Bench of more Judges, the order would be expressed in the name of High Court and not in the name of individual Judge ; while interpreting Article 199(5) of the Constitution with regard to the definition "person", included Supreme Court or High Court or a Tribunal under the law relating to the Armed Forces of Pakistan from its purview, no writ or order can be issued to the High Court or Supreme Court under Article 199 of

the Constitution, as it amounts issuance of the same against the Supreme Court or High Court itself ; and, the administrative or executive orders passed by the Chief Justice of the High Court or the Registrar while acting under the orders of the Chief Justice, also enjoy the protection falling under the ambit of Article 199(5) of the Constitution.

5. The cases of *Abrar Hassan* (supra) and *Muhammad Imran* (supra) were followed in *Shahab Mazhar Bhalli V/S Pakistan Railways, 2014 PLC (C.S.) 356*, and *Amphy Salim Malik V/S The Nazir of the High Court of Sindh and others, (Constitutional Petition No.D-1840/2009)*, decided on 09.05.2014, by two separate Division Benches of this Court of which one of us (Nadeem Akhtar, J.) was a member.

6. In view of the well-settled law discussed above, there is no doubt that this petition is not maintainable, and in fact is a clear and gross abuse of the process of this Court. Against the impugned order, the petitioner had the remedy to file a petition for leave to appeal before the Hon'ble Supreme Court, which was not availed by him as conceded by his learned counsel.

7. This petition should not have been entertained or registered by the office in the first instance. The Registrar of this Court is directed to place a copy of this order before the Hon'ble Chief Justice for his lordship's perusal and for taking action, if his lordship deems fit and proper, against such negligent staff / employees of this Court who were responsible for entertaining and registering this Constitutional Petition against the order passed by the learned single Judge of this Court.

Foregoing are the reasons of the short order announced by us on 30.01.2015, whereby this petition and the listed application were dismissed.

J U D G E

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