

## THE HIGH COURT OF SINDH, KARACHI

Present:

*Justice Mohammad Karim Khan Agha*  
*Justice Adnan-ul-Karim Memon*

### **CP No.D-1680 of 2018**

[Mukhtiar Ahmed v Federation of Pakistan and others]

Petitioner: Mukhtiar Ahmed through Mr. Ashfaq Ahmed advocate

Respondents: Federation of Pakistan through Ms. Wajiha Mehdi  
Assistant Attorney General

Executive officer Cantonment Board Manora through Mr.  
Muhammad Fahad advocate

Dates of hearing: 29.04.2025

Date of decision: 05.05.2025

### **ORDER**

**Mohammad Karim Khan Agha, J.** – Through this petition, the petitioner has sought directions of this Court to declare office orders dated 29<sup>th</sup> and 31<sup>st</sup> January 2018 as null and void, whereby the petitioner was dismissed from service and allotment of quarter No.10 was canceled.

2. At the very outset learned Asstt. Attorney General as well as learned counsel appearing for respondent No.2 raised the issue of maintainability of instant petition. Therefore, we have decided to first decide the question of maintainability.

3. Succinctly the relevant facts of the case are that petitioner was appointed on 28.02.2003 in Cantonment Board Manora as Mali (BS-01). On 22.10.2017, one goat entered into the green belt of Manora Cantonment Board, it was informed to relevant persons, the respondent No.2 fined the owner of the goat but he did not pay such fine, as such the said goat was handed over to the concerned persons. However, said goat misplaced, hence FIR No.186/2017 was registered under Section 380 PPC at PS Maripur, in which and the petitioner was nominated. Thereafter, through the impugned office orders, the petitioner was dismissed from service and his quarter was canceled. Hence the petitioner challenged both the office orders through the instant petition.

4. During proceedings, the petitioner was acquitted under section 249-A Cr.P.C from the aforesaid criminal case vide order dated 05.12.2018 passed by learned XXIII-Judicial Magistrate, Karachi West. On 25.04.2019, learned counsel for the petitioner placed on record the order of acquittal of the petitioner, however, learned counsel for the respondent No.2 sought time for seeking instructions from the respondent No.2 but

unfortunately, the petitioner expired on 14.07.2020, as such legal heirs of the petitioner were impleaded as party in this petition.

5. Learned counsel for the respondent No.2 as well as learned Assistant Attorney General emphatically argued that this petition is not maintainable as the petitioner in the first instance had failed to approach Chief Executive Officer of Cantonment Board under section 52 of the Pakistan Cantonment Servants Rules 1954.

6. Learned counsel for the petitioner argued that this Court vide order dated 02.03.2018 suspended the operation of impugned order dated 29.10.2018, therefore in the event of such interim order, the petitioner was required to pursue this petition instead of approaching the Chief Executive Officer of Cantonment Board, as such he submitted that instant petition is maintainable before this Court.

7. We have heard the parties, perused the record and considered the relevant law.

8. The jurisdiction of the courts in Pakistan are governed by Article 175 of the Constitution, which is set out below for ease of reference:

*175. (1) There shall be a Supreme Court of Pakistan, a High Court for each Province [and a High Court for the Islamabad Capital Territory] and such other courts as may be established by law.*

*[Explanation.— The word “High Court” wherever occurring in the Constitution shall include the High Court for the Islamabad Capital Territory.]*

*(2) No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.*

*(3) The Judiciary shall be separated progressively from the Executive within [fourteen] years from the commencing day.*

*[“Provided that the provisions of this Article shall have no application to the trial of persons under any of the Acts mentioned at Serial No. 6 and 7 of sub-part III of Part I of the First Schedule, who claim, or are known, to belong to any terrorist group or organization misusing the name of religion or a sect.*

*Explanation.— In this proviso the expression “sect” means a sect of religion and does not include any religious or political party regulated under the Political Parties Order, 2002.”] (bold added)*

9. As such this court in order to have jurisdiction to hear this petition must have such jurisdiction conferred on it either by the Constitution or by any other law.

10. This petition has been filed by the petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan (the Constitution) and according to the petitioner derives jurisdiction from Article 199 of the Constitution which provides as under in material part.

**Article 199- Jurisdiction of High Court.**

*(1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-*

*(a) on the application of any aggrieved party, make an order-*

*(i) directing a person performing, within the territorial jurisdiction of*

*the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or*

*(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or*

11. From a plain reading of the parts of Article 199 of the Constitution which are reproduced above this court has jurisdiction subject to the Constitution.

12. Under Article 199 of the Constitution two hurdles need to be crossed before this court can assume jurisdiction. The first is that this court must satisfy itself that ***that no other adequate remedy is provided by law***. If this hurdle is crossed **only then** can this court turn to see if the second hurdle has been crossed which is that the application has been made by an **aggrieved party** which has been defined by the superior courts through a plethora of authorities. If neither of these hurdle are crossed by the petitioner then this court has no jurisdiction to proceed with this petition **unless** the order from which relief is sought is based on malafides which is not the case based on the particular facts and circumstances of this case.

13. In support of this contention reliance is placed on the case of **The Executive Director (P&GS) State Life, Principal Office Karachi and others vs. Muhammad Nisar, Area Manager, State Life Corporation of Pakistan, Peshawar Zone, Peshawar** (2025 SCMR 240), where it has been held as under:

*“13. In the case of Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar and others v. Shah Faisal Wahab and others (2023 SCMR 1642) and Special Secretary-II (Law and Order), Home and Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Fayyaz Dawar (2023 SCMR 1442) (authored by one of us) it was held that the extraordinary jurisdiction under Article 199 of the Constitution is intended to provide an expeditious remedy in a case where the illegality of an impugned action can be established without any elaborate enquiry or recording of evidence, but if some complicated or disputed question of facts are involved, the adjudication of which could only possible to be resolved and decided by the Courts of plenary jurisdiction after recording evidence of the parties, then obviously the High Court should not embark on deciding convoluted issues of facts. The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any inquiry. **The expression "adequate remedy" signifies an effectual, accessible, advantageous and expeditious remedy. In the case in hand, the remedy of filing civil suit was an appropriate and alternate remedy as *remedium juris* which was more convenient, beneficial, and effective.** Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties, can be determined only by the courts having plenary jurisdiction in the matter, and on such ground the constitutional petition was incompetent (Ref: State Life Insurance Corporation of Pakistan v. Pakistan Tobacco Co. Ltd. [PLD 1983 SC 280]).” (bold added)*

14. Like wise in the case of **Khalid alias Muhammad Khalid and others vs. Collector of Customs (Adjudication), Custom House, Lahore and others** (2024 SCMR 1806), the Apex Court has held as under:

*“8. As held in Vishwabharathi by the apex court of a neighbouring jurisdiction, a statutory tribunal that has been conferred the power to adjudicate a dispute and pass an order on it also has the power to implement that order. Even if this power has not been specifically spelled out in the statute, it must be deemed to have been impliedly conferred upon the statutory tribunal. Courts and statutory tribunals must be held to possess the power to execute their own orders; for when a court or tribunal is conferred jurisdiction or substantive power to make an order, the power to execute such an order, being ancillary and incidental, is also impliedly conferred by the statute. This is necessary because the jurisdiction or substantive power would be useless if the order passed in exercise thereof could not be executed and enforced. The same principle applies to the jurisdiction and substantive power of the Tribunal under Sections 194-A and 194-B of the Customs Act. The power to execute an order passed under these express provisions of the Customs Act, being ancillary and incidental, is also impliedly conferred upon the Tribunal by the Customs Act. We thus conclude that the Tribunal has the power to execute orders passed in exercise of its appellate jurisdiction under Sections 194-A and 194-B of the Customs Act. Consequently, since an adequate remedy is provided by law, the writ jurisdiction of the High Court cannot be invoked for executing orders passed by the Tribunal.” (bold added)*

15. Both the aforementioned judgments make it clear that this court has no jurisdiction to hear petitions under Article 199 if an alternate adequate remedy is provided by law.

16. In the petition in hand the petitioner was dismissed from service by the respondent vide office order dated 29.01.2018 which is reproduced below for ease of reference’

CANTONMENT BOARD MANORA  
40 Qasim Road, Manora Cantt.  
Ph #: 021-99232156, Fax: 021:32691286  
Email: cantonmentboardmanora@gmail.com

O.O No. 078

Dated: 29 January, 2018

**OFFICE ORDER**

Subject: **DISMISS FROM SERVICE**

*In exercise of provisions of Rule 49(2) of Pakistan Cantonment Servant Rules 1954 (amended) Mr. Mukhtiar Ahmed Mali (BPS-02) of this office, is dismissed from the service of the Cantonment Board Manora with immediate effect for theft in Cantt Board manor and causing financial loss to CBM.*

Sd/-  
(Syedan Imammah Ali)  
Executive officer  
Cantonment Board Manora

17. Likewise the petitioner's quarter was also cancelled w.e.f 29.01.2018 by the respondent by an office order of even date in the following terms;

CANTONMENT BOARD MANORA  
40 Qasim Road, Manora Cantt.  
Ph #: 021-99232156, Fax: 021:32691286  
Email: cantonmentboardmanora@gmail.com

O.O No. 084

Dated: 31 January, 2018

**OFFICE ORDER**

*Consequent to the dismissal of Mr. Mukhtiar Ahmed Mali from the strength of Cantonment Board Manora, the allotment of quarter No.10 behind old central Market is hereby cancelled w.e.f 29-01-2018.*

Sd/-  
(Syedan Imammah Ali)  
Executive officer  
Cantonment Board Manora

18. The petitioner challenged both the aforesaid office orders by filing this petition under Article 199 of the Constitution on 02.03.2018 about one month after the impugned orders. On the first date of hearing on 02.03.2018 without questioning the maintainability of this petition under Article 199 of the Constitution this court issued an ex parte order suspending the dismissal from service order which enabled to the petitioner to continue his job.

19. Consequently on 15.05.2019 when the payment of the petitioners salary was at issue the following statement was filed by CEO, Cantonment Board Manora which is set out below for ease of reference and in effect challenged the maintainability of this petition under Article 199 of the Constitution as in effect the petitioner had another ***adequate remedy available to him under the law which is the first hurdle which must be crossed before this court can assume jurisdiction under Article 199 of the Constitution.***

**"STATEMENT"**

*I, the undersigned Chief Executive officer, Cantonment Board manora (Respondent No.2) do hereby state that the petitioner has remedy under rule 44(4) of the Cantonment Servant Rules 1954 (as Amended). First he has to approach to appellate authority for the redressal of his grievances. However, prior to appearing before the Competent Authority, the petitioner filed above petition, which is liable to be dismissed.*

Sd/-  
Chief Executive officer  
Cantonment Board Manora  
Respondent No.2

Karachi  
Dated 15.05.2019

20. This alternate remedy is provided in rule 44 Cantonment Servant Rules 1954 which is set out as under for ease of reference;

### **TERMINATION OF SERVICE**

*“44(1) No servant shall be retained in the service of a Board after he attains the age of [sixty] years except with the sanction of the [Director General]*

*(2) In the case of servant whose year, or year and month, of birth is known, but not the exact date, the 1<sup>st</sup> July, or 16<sup>th</sup> of the month, respectively shall be deemed to be the date of birth for the purpose of determining the date on which he attains the age of [sixty] years for the purpose of this rule.*

*(3) The appointing authority may in the public interest compulsorily retire a cantonment servant on any date after he has completed twenty five years of service qualifying for pension or other retirement benefits subject to the conditions that-*

- (a) two or more major penalties under these rules have been imposed upon the cantonment servant; or*
- (b) overall grading of the performance evaluation reports in respect of the cantonment servant for the last three years is below average or adverse remarks with regard to acceptance of responsibility, integrity, reliability, output of work and behavior with the public were recorded therein and conveyed to the cantonment servant and his or her representation thereon has not been acceded to by the competent authority; or*
- (c) the cantonment servant has been superseded twice on recommendations of the relevant departmental promotion committee and with the approval of the competent authority and his appeal, if any against such supersession, has been rejected by the appellate authority; or;*
- (d) the cantonment servant has the persistent reputation of being corrupt or is in possession of pecuniary resources or property etc. disproportionate to his known sources of income or has been proved guilty of frequent unauthorized absence from duty or habitual late coming to office;*

*Provided that no order under this sub-rule shall be made in respect of a cantonment servant unless the appointing authority has informed him in writing of the grounds on which it is proposed to make the order and has given him an opportunity of showing cause against it.*

***(4) The cantonment servant may, within thirty days of receipt of order under sub-rule (3), prefer an appeal against that order to the next higher authority specified under sub-rule (1) of rule 7 whose decision thereon shall be final;***

*Provided that appeal in respect of the Cantonment Servant in BPS-16 and above shall lie to the Secretary, Ministry of Defence.” (bold added)*

21. Even otherwise another alternate remedy was provided in Rule 52 of the Pakistan Cantonment Servants Rules 1954, which is set out below for ease of reference:

**“52(1) Any cantonment servant, on whom a penalty under rule 50 is imposed, shall, within thirty days of the receipt of such order of penalty, be entitled to prefer an appeal to the next higher authority specified under sub-rule (1) of rule 50;**

**Provided that for cantonment servants in BPS-16 and above next higher authority shall be the Secretary Defence.**

**(2) The appellate authority under sub-rule (1) may, on consideration of the appeal and any other relevant material, confirm, set aside, vary or modify the order in respect of which such appeal is made.” (bold added)**

22. As such the petitioner had *an alternate remedy available to him under the law which admittedly he did not avail before rushing to file his petition before this Court which meant that this court under the Constitution had no jurisdiction to hear his petition which ought to have been dismissed as not maintainable on 15.05.2019.*

23. It is well settled by now that once it is shown that a court has no jurisdiction to hear a case then the court is denuded from proceeding with such case no matter what stage it has reached.

24. In this petition, as with so many other petitions, this petition was allowed to drag on for years on end despite the petitioner himself dying during the course of the petition, which ought to have lead the petition moved by the petitioner becoming infructuous as his cause of action had ceased however instead his legal heirs were allowed to join the petition who had no separate cause of action. However, the petitioner has requisite length of 17 years in his credit as the Court suspended the operation of impugned termination letter vide order dated 02.03.2018, as such legal heirs may approach the respondents for service benefits of the deceased petitioner in accordance with law.

25. Regrettably, rather than complying to the strict legal requirements before a petition is found to be maintainable under Article 199 of the Constitution a trend has arisen where resort to Article 199 of the Constitution seems to have become the panacea for all ills despite the petition not meeting the legal ingredients of Article 199 which would make it maintainable.

26. We note with concern that this is a disturbing trend as it is upsetting the very structure of the legal system which provides certain legal avenues which must be firstly availed before considering whether a petition under Article 199 of the Constitution is maintainable. In effect this is an attempt to short circuit/side step a well structured legal system with its structures and rules of procedure as provided by law which must be followed in the correct manner rather than jumping, with little thought, on most occasions to the courts jurisdiction under Article 199 before exhausting other legal remedies which often renders the petition not maintainable under Article 199 which entails extra hardship and costs for the litigant who then has to approach the correct forum which under the law

he should have approached in the first place before considering a petition under Article 199 of the Constitution.

27. Accordingly, since we find that this petition is not maintainable under Article 199 of the Constitution and this court has no jurisdiction to entertain the same the petition is accordingly dismissed as being not maintainable.

HEAD OF CONST. BENCHES

JUDGE