

ORDER SHEET
LAHORE HIGH COURT,
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.2901 of 2023

Ummaira Saleem

V/S *Federation of Pakistan and others*

<i>S.No.of order / Proceedings</i>	<i>Date of order /Proceedings</i>	<i>Order with signatures of Judge, and that of parties or counsel, where necessary.</i>
	26.09.2023	M/s Inam-ur-Rehiem, Basit Khan Tanoli and Waheed Akhtar, Advocates for the Petitioner. Malik Muhammad Siddique Awan, Additional Attorney General with Arshad Mehmood Malik, Assistant Attorney General with Lt. Col. Haider Sultan, Law, DTE, G.H.Q.

The Petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “**Constitution**”) with the following prayers:

- i. *The respondents be directed to produce the petitioner's husband Brigadier Akhtar Subhan, safe and sound before this Court, who on production, be dealt with in accordance with law and the Constitution”.*
- ii. *Hold and declare that the arrest and detention of petitioner's husband is illegal and in violation of the service rules.*
- iii. *The respondents be directed to disclose the charge (if any, in terms of Rule 23 and 24 of the Pakistan Army Act Rules, 1957) if pending against the detenue before this Hon'ble Court.*

2. The sole grievance of the Petitioner is that her husband has been taken into custody unlawfully by the Respondents who are not even permitting her to meet him.

3. Learned Additional Attorney General filed reply and objected to maintainability of the petition on the touchstone of Article 199(3) and Article 8(3) of the “*Constitution*”. It has been stated that the Petitioner’s husband is a serving army officer therefore, he is subject to Pakistan Army Act, 1952 (the “*Act*”). It has further been stated that Petitioner’s husband was arrested in terms of Section 73 of the “*Act*” and is being investigated by the military authorities under Section 2(1)(a) of the “*Act*”.

4. Heard.

5. Learned Additional Attorney General and Lt. Col. Haider Sultan, Law, DTE, G.H.Q. have referred to the reply dated 22.09.2023 and submitted in line therewith that instant petition is not maintainable on score that the Petitioner’s husband is under legal and lawful custody of military authorities in connection with investigation underway under the “*Act*”. When this aspect of the matter was confronted to learned counsel for the Petitioner, he pointed out that the Petitioner was given access to meet her husband yesterday.

6. Admittedly, the Petitioner is serving commissioned officer (PA-33025, Brigadier) of Pakistan Army performing his duties under the control of Federal Government Ministry of Defence and is subject to the “*Act*”. Article 199(3) of the “*Constitution*” clearly bars the jurisdiction of this Court under Article 199(1)(b) to resolve the matters involved in this petition. The scope of constitutional jurisdiction in matters relating to Article 199(3) of “*Constitution*” is very limited. The Hon’ble Supreme Court of Pakistan in the case of “SAID ZAMAN KHAN and others Versus FEDERATION OF PAKISTAN through Secretary Ministry of Defence and others” (**2017 SCMR 1249**), while outlining the scope of Article 199(3) held as under:-

"70. In the proceedings culminating in the impugned Judgments/Orders, the jurisdiction of the learned High Courts under Article 199 of the Constitution, had been invoked. The said Article contains a non obstantive provision i.e. sub-Article (3) thereof, which reads as under:

"(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."

(emphasis supplied)

7. A bare perusal of the aforesaid provision would suggest that *prima facie* a High Court in exercise of its jurisdiction under Article 199(3) of the "Constitution" cannot pass any order in respect of any person who even for the time being is subject to any law pertaining to the Armed Forces with regard to any action taken under such law. The Pakistan Army Act, 1952, is one of the laws applicable to the Armed Forces of Pakistan. It is noted that this Court has already dismissed a writ petition (W.P.No.1459 of 2017) vide dated 11.03.2019 with the following observations:

"The matter agitated, is hit by Article 199(3) of the Constitution, as also held in the earlier judgment passed by this Court in W.P.No.324/2012. Mere fact that after withdrawal of appeal (ICA), Respondent No.2, again dismissed Petitioner's representation vide order dated 13.04.2017, will not confer jurisdiction on this Court, when it has already been held by this Court that in this case jurisdiction

of this Court is barred under Article 199(3) of the Constitution".

8. The Supreme Court of Pakistan in number of judgments including "Ex. Lt.-Col. Anwar Aziz (PA-7122 Vs. Federation of Pakistan through Secretary, Ministry of Defence, Rawalpindi and 2 others" (**PLD 2001 SC 549**), "MRS. SHAHIDA ZAHIR ABBASI and 4 others versus PRESIDENT OF PAKISTAN and others" (**PLD 1996 SC 632**) and "MUHAMMAD MUSHTAQ versus FEDERATION OF PAKISTAN etc" (**1994 SCMR 2286**) has held that matters relating to the members of the armed forces is barred by Article 199(3) of the Constitution and also held that Article 8(3) of the "Constitution" shall not apply to any law relating to members of the armed forces. This view was later on followed by this Court in "ASIF MAHMOOD versus FEDERATION OF PAKISTAN and others" (**PLD 2005 Lahore 721**) wherein it has held as under:

"10. ... However, the provisions of the Act are protected under Article 8(3)(a) of the Constitution from being challenged on the ground of inconsistency with the fundamental rights contained in Chapter I, Part II of the Constitution, therefore, non-compliance of the provisions of Article 10(2) of the Constitution could not invalidate the arrest and detention of accused officers under the Act. ...

11. It is admitted position that the detenu has been arrested under the Army Act and there is no reasons to disbelief this statement as it is sufficient to infer that the detenu has not been arrested except in due course of law and the matter relating to the members of the army force are immune from scrutiny of this Court in view of Sub-Article (3) of Article 199 of the.

...
12. Though the detenu in this case has not been an Army personnel but he has also been arrested under the Army Act, therefore, this case is also covered with the bar as contained

under Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973. ...”

9. Moreover, the Hon’ble Supreme Court of Pakistan in C.P.No.4794 of 2018 dated 06.04.2020 has observed as follows:

“At the outset, we have noted that the very Writ Petition No.1494/2017 filled by Respondent No.1 (the respondent) before the High Court was barred under Clauses (3) and (5) of Article 199 of the Constitution for that the Respondent was a Colonel in the Pakistan Army and matters relating to Armed Forces of Pakistan are specifically excluded from being agitated before the High Court”.

10. In view of the reply submitted on behalf of Respondents, the whereabouts of the Petitioner’s husband, authority having arrested him as well as place and reasons of his detention, are now known as he is under the custody of military and is being investigated under Section 2(1)(d) of the “*Act*” therefore, his production order cannot be made. Reliance is placed on “ALI RIZWAN RAJA versus FEDERATION OF PAKISTAN and others” (**PLD 2019 Islamabad 273**) wherein the Court in paragraph No.13 has held that

“Since the whereabouts of Brigadier (retired) Raja Rizwan Ali Haider are known and he is under the custody of military under the Pakistan Army Act, 1952, hence his production order cannot be made. The relief to the said extent cannot be granted, hence is disallowed. Moreovoer, in the light of report by respondents the detenue is under investigation for offences under Section 2(1)(d) of Pakistan Army Act, 1952. The petition to the extent of second part of relief has borne fruit and is accordingly disposed off. Likewise in view of above discussion third part of relief prayed is disallowed. However, needless to observe that Brigadier (retired) Raja Rizwan Ali Haider may avail remedies available to him under the law.”

11. It is noted that the Respondents were quite correct whilst stating on last two dates of hearing that the husband of the Petitioner is in their lawful custody in a lawful manner under the “*Act*” and writ of *habeas corpus* is only maintainable if a person is detained without lawful authority in an unlawful manner. In the light of above referred judgments of Supreme Court of Pakistan, which are binding on this Court under Article 189 of the “*Constitution*”, this petition is not maintainable and is **dismissed.**

Copy dasti on payment of usual charges.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE

*Usman**