

Judgment Sheet
IN THE LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

W.P.No.3542/2022

Khushdil Khan Malik **Versus** Federation of Pakistan
and others

J U D G M E N T

Date of hearing	05.10.2023
Petitioner By:	Petitioner, Khushdil Khan Malik, in person.
Respondents By:	Malik Muhammad Siddique Awan, Additional Attorney General and Mr. Arshad Mahmood Malik, Assistant Attorney General with Sajid Khan, Legal Officer and Madiha Hussain, Legal Assistant.

Jawad Hassan, J. The Petitioner has filed this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “***Constitution***”) with the prayer to:

- 1. declare the acts of the Respondents No.1 to 4, as illegal, unlawful, non-transparent, arbitrary, based on malice and violative of the judgments of the Superior Courts.*
- 2. direct the Respondents No.1 to 3 to consider the recommendations/citations of the Petitioner as made by the Respondent No.5, for conferment of Civil Award of “Sitara-i-Imtiaz” upon the Petitioner by the President of Pakistan on the eve of forth-coming Pakistan Day falling on 23rd March, 2023 or Independence Day falling on 14th August, 2023.*

I. BRIEF FACTS OF THE CASE

2. Pursuant to a letter issued by the Respondent No.4/Secretary, Ministry of Defence, Government of Pakistan (the “***Ministry of Defence***”), whereby recommendations were invited for the Pakistan Civil Awards-2022 (the “***Award***”), the Respondent No.5 i.e. the Director General, Federal Government, Educational

Institutions (Cantt/Garrison) Directorate, Rawalpindi Cantt. (the “*FGEI*”), vide letter dated 07.04.2022, forwarded name of the Petitioner alongwith five other recommendees to the Ministry of Defence for consideration at appropriate level and for further submission to the concerned authorities, but the Ministry of Defence forwarded a list of ten recommendees on the prescribed proforma to Respondent No.1 i.e. the Secretary, Cabinet Division, Islamabad (the “*Cabinet Division*”), through office memorandum dated 06.07.2022, without including name of the Petitioner and other persons recommended by the Director General/Federal Government, hence, this petition for non-consideration of name of the Petitioner for conferment of the Award by Respondent No.3/Main Awards Committee (the “*Committee*”).

II. PETITIONER’S SUBMISSIONS

3. The Petitioner, while pleading his case, submitted that he rendered services for the Government of Pakistan on various positions with higher responsibilities outside his cadre and obtained numerous achievements while serving the State as well as citizens of Pakistan. When the Respondent No.1 sought nominations of suitable persons on 27.12.2021 from all the Ministries/Divisions, including the Respondent No.4, for conferment of the Award on the Independence Day, the FGEI duly forwarded his name alongwith others for the said purpose, but the “*Ministry of Defence*” recommended only names of the persons of their own choice by ignoring the recommendations which were made by the “*FGEI*” strictly in accordance with the General Instructions and Legal Provision for Making Recommendations for Pakistan Civil Awards (the “*Instructions*”) issued by the Government of Pakistan, Cabinet Secretariat, Cabinet Division, Awards Wing, thus, his name could not be considered by the Committee. He maintained that the act of the Respondent No.4 is illegal, arbitrary in nature depriving him from his accrued right of conferment of the Award. He argued that the principles of transparency and fair play have

been ignored by the authorities while proceeding with conferment of the Award. He next contended that even otherwise the Committee is not competent to confer the Award on any citizen of Pakistan and such power only vests with the President as per Article 259 of the “*Constitution*”. He has also drawn attention towards notification dated 13.06.2022 (the “*Notification*”) issued by the Cabinet Division under Rule 3(4) of the Rules of Business, 1973 (the “*Rules*”) regarding reconstitution of various Award Committees for scrutiny and recommendation of nominees for conferment of the Award.

III. RESPONDENTS’ ARGUMENTS

(a) Submissions of the Respondent No.1 (Secretary, Cabinet Division, Islamabad)

4. The Respondent No.1, in his report and parawise comments, has only laid down emphasis on the point that name of the Petitioner was not considered by the Committee for conferment of the Award because his matter was not forwarded by his nominating agency i.e. the Ministry of Defence. It has further submitted that conferment of the Award is not the vested right of any citizen, therefore, it cannot be claimed as a matter of right.

(b) Submissions of the Respondents No.2, 4 and 5 (Secretary to Prime Minister, Prime Minister’s Office, Constitution Avenue, Islamabad; Secretary, Ministry of Defence, Rawalpindi Cantt. and Director General, Federal Government Educational Institutions (Cantt./Garrison) Directorate, Rawalpindi Cantt.)

5. In their report and para-wise comments, the Respondents have objected to the maintainability of this petition by submitting that the Petitioner has no *locus standi* to approach this Court because he is neither an “aggrieved party” nor “aggrieved person”. They further submitted that the Petitioner has no legal right to claim the Award and the extraordinary jurisdiction of this Court under Article 199 of the “*Constitution*” can only be invoked when any legal or fundamental right of a citizen of this country, as guaranteed

by the “*Constitution*”, is violated. They prayed for dismissal of the writ petition.

6. Arguments heard and record perused.

IV. DETERMINATION BY THE COURT

7. The basic issue in this case is whether the Petitioner, if once nominated, is to be conferred the Award under the law and for this purpose, the Court has to examine the relevant law and the procedure. Article 259 of the “*Constitution*” describes the Award, which is reproduced hereunder for ready reference:-

“259. (1) No citizen shall accept any title, honour or decoration from any foreign State except with the approval of the Federal Government.

(2) No title, honour or decoration shall be conferred by the Federal Government or any Provincial Government on any citizen, but the President may award decorations in recognition of gallantry, meritorious service in the Armed Forces, academic distinction or distinction in the field of sports or nursing, as provided by the Federal law.

(3) All titles, honours and decorations awarded to citizens by any authority in Pakistan before the commencing day otherwise than in recognition of gallantry, meritorious service in the Armed Forces or academic distinction shall stand annulled.”

Section 3 of the Decorations Act, 1975 (the “*Act*”) also mentions the complete mechanism regarding the decorations, which reads as under:-

“3. Institution or creation of decorations.-

(1) The President may, by warrant, institute, or create, from time to time any decorations in recognition of gallantry, meritorious service in the Armed Forces, academic distinction or distinction in the field of sports or nursing and prescribe the conditions under which a decoration may be awarded, conferred, withdrawn, forfeited or annulled, or may be restored after its withdrawal, forfeiture or annulment.

(2) *The President may also award decoration posthumously and the monetary reward, if any, attached to the decoration shall be paid to the next of kin of the person to whom the decoration is awarded.*

(3) *No decoration shall be awarded, conferred, withdrawn, forfeited or annulled, and no decoration which has been withdrawn, forfeited or annulled shall be restored, except with the personal approval of the President.*

(4) *Every award, conferment, withdrawal, forfeiture, annulment and restoration of a decoration shall be published in the official Gazette.”*

If Article 259(2) of the “*Constitution*” and provisions of Section 3 of the “*Act*” are put in juxta-position, it would be clarified that the President can only award the title, honour or decoration on any citizen in recognition of gallantry (awards in relation to *Shuja’at*), academic distinction (awards in the order of *Imtiaz*), sports, nursing, human rights and public service (awards in the order of *Imtiaz*) and the power to withdraw, forfeit or annul a title or decoration also vests with the President on whose personal approval, the title or decoration shall be restored if once withdrawn, forfeited or annulled. Now, the question arises what is the legal procedure for nomination of the Award as claimed by the Petitioner. As per the Act, the term “gallantry” has been redefined to include an act of bravery, heroism, courage and rendering dedicated services with self-sacrificing commitment in human rights and public service. The announcement for conferment of the Award is made once a year on the Independence Day (14th August) and the investiture ceremony takes place on the following Pakistan Day (23rd March). In this case, the most relevant procedural part is the recommendations, which are invited by the Cabinet Division in December every year from all the Ministries/Divisions as well as the Provincial Governments. The complete particulars of the recommendees are firstly placed before the Awards Committee which, after conducting various meeting sessions and due scrutiny

of the relevant documents, places the said details before the Main Awards Committee headed by the Federal Ministers, which then move a summary to the President through the Prime Minister for final approval. It is pertinent to mention here that the “*Notification*” and the “*Instructions*” have also been issued in this regard by the Cabinet Division but the “*Notification*” shows various committees which include (i) Awards Sub-Committee on Science, Engineering & Education; (ii) Awards Sub-Committee on Arts and Literature; (iii) Awards Sub-Committee on Social/Welfare Work/Charity & Philanthropy; and (iv) Main Awards Committee while the “*Instructions*” discuss scope of the Award and also narrate various steps necessary for its recommendations. Criteria and the fields of activity for the conferment of the Award have been given in the Warrant of Institution of Pakistan Awards (Civil), the Warrant of Institution of the President’s Award for Pride of Performance and the Warrant of Institution of the Awards in the Orders of Pakistan, *Quaid-i-Azam* and *Khidmat*, whereas the cases of the civil servants for nominations are processed through the Establishment Division, which scrutinizes the claims critically and verifies the credentials of the nominees.

V. CONCLUSION

8. There is a complete mechanism for conferment of the Awards and after adopting all the procedural steps, the matter has been referred by the Committee to the President for conferment of the Award, therefore, the contention raised by the Petitioner that the Committee has no authority to confer the Award on any citizen of Pakistan has no force. There are many kinds of awards, few whereof famously are known as (i) Nishan-i-Imtiaz (ii) Hilal-i-Pakistan (iii) Sitara-i-Shujaat (iv) Sitara-i-Imtiaz and (v) President’s Award for Pride of Performance. There is no denying that Article 4 of the “*Constitution*” guarantees right of individuals to be dealt with strictly in accordance with law, but at the same pedestal Article 5(2) thereof requires obedience to the

“*Constitution*” and law is the inviolable obligation of every citizen. Record reveals that the Petitioner is employee of the Respondent No.5, which is attached department of the “*Ministry of Defence*” under Schedule II of the Rules, and though the “*FGEI*” has forwarded his name to the Respondent No.4 for further recommendation to the Cabinet Division for conferment of the Award in relation to his public service as a civil servant, but the “*Ministry of Defence*” has not further recommended his name for nomination of the Award. Merely nominating name of the Petitioner by his parent Department to the relevant Division, does not create any legal/vested or fundamental right in his favour. In this regard, reference can be made to the verdict rendered by the Supreme Court of Pakistan in the judgment reported as “MUHAMMAD AKBAR versus FEDERATION OF PAKISTAN, MINISTRY OF LAW AND JUSTICE (JUSTICE DIVISION), ISLAMABAD through Secretary and another” (1996 SCMR 1017) in which it has been held that the Government is neither bound to accept the recommendation nor a vested right is accrued in favour of the person/party claiming such right merely because his/her name was recommended by the authority. This view has subsequently been followed by this Court in the case of “NAZIR A. KHAN SWATI versus MINISTRY OF LAW & JUSTICE and others” [1998 PLC (C.S) 372], wherein it has been observed that “*mere nomination of the petitioner for the appointment against the advertised post did not create any vested right in the petitioner*”. Though the “*Constitution*” has conferred power on the High Courts, but for the enforcement of fundamental rights and not to create such rights as has been laid down by the Supreme Court of Pakistan in the case of “ASDULLAH MANGI and others versus PAKISTAN INTERNATIONAL AIRLINES CORPORATION and others” (2005 SCMR 445). Moreover, this Court can only declare the pre-existing right, but cannot create a new right through a declaration, while exercising its jurisdiction under Article 199 of

the “*Constitution*” and consideration for conferment of the Award is not a pre-existing right of the Petitioner. Another important aspect of the matter is that the Petitioner is neither an aggrieved party nor aggrieved person therefore, no legal or fundamental right has been violated by any authority. In the case of “KAMRAN MARTIN versus Mst. SIERA BIBI and 4 others” [2017 PLC (C.S.) 597], the Division Bench of this Court has already held that “*a person to have locus standi to initiate a petition for issuance of writ, he/she must have some right in the matter and he/she need not have a right in that strict sense of the term which is provided in Article 170 of the Constitution.*” Here, reference can also be made to the judgment passed by the Supreme Court of Pakistan in the case of “Dr. IMRAN KHATTAK and another versus Ms. SOFIA WAQAR KHATTAK, PSO to Chief Justice and others” (2014 SCMR 122) wherein it has held that “*no Judge of a High Court or the supreme Court is robed, crowned and sceptered as a King to do whatever suits his whim and caprice. In all eventualities, he is bound to abide by and adhere to the law and the Constitution.*”

9. It is also to be noted that the Cabinet Division invites nominations for the Pakistan Civil Awards from the Provincial Ministries/Divisions every year in the month of December or January with a cut-off date of 15th April, through a circular, and as per the given selection process, each nomination is considered by the respective nominating agency. After receiving of nominations in the Cabinet Division, the documents are verified and placed before the respective Awards Sub-Committee headed by the concerned Federal Ministers and once final recommendation is made by the Main Awards Committee, a summary is moved to the President of Pakistan, through the Prime Minister, for approval under provisions of Article 259(2) of the “*Constitution*” read with the Act. In this case, the Petitioner never approached the Cabinet Division on account of his nomination having not been forwarded by his nominating agency i.e. the Ministry of Defence, which fact

he admitted in paragraph-5 of his petition, thus cannot claim such award as a matter of right in light of the law discussed in aforementioned judgments. It is unequivocal that name of the Petitioner was recommended by the Respondent No.5/Major General Muhammad Asghar, Director General, FGEI (C/G) Directorate, Rawalpindi on 15.04.2022, as is evident from Annexure-D (page 17), on the Recommendation Form alongwith the Revised Quantification Performa and Citation dated 7th April, 2022 [which are available at pages 18 to 20 of this petition] by clarifying that in recognition of his long meritorious services and numerous achievements in the field of Public Service at various positions in past, where he rendered services towards the welfare of people and the betterment of nation, he is strongly recommended for Civil Award of “Sitara-i-Imtiaz” to be conferred on the eve of Independence Day. However, this recommendation was then forwarded to the “*Ministry of Defence*” which did not further forward the same to the Cabinet Division, therefore, name of the Petitioner could not be considered for conferment of the Award. When confronted to the Petitioner whether he approached the “*Ministry of Defence*” or the Cabinet Division for the highlighting the aforesaid aspect of not nominating his name for conferment of the Award, he answered in negative. Further, the recommendations have been made by the “*Ministry of Defence*” on 06.07.2022, as reflected from the letter/Annexure-A, but the Petitioner, who was well aware of this fact, has approached this Court on 07.12.2022 after a considerable delay of about five months. He remained mum during the intervening period and failed to give any satisfactory answer in this regard as well.

10. In view of the above backdrop, as the Petitioner has neither approached the “*Ministry of Defence*” nor the Cabinet Division for agitating the matter therefore merely, recommending his name by the nominating agency does not create any substantial or fundamental right for conferment of the Award in his favour in

light of the judgments passed by the Supreme Court of Pakistan as well as this Court, mentioned above. Hence his prayer to direct the Respondent No.4/Ministry of Defence to forward his name to the Cabinet Division, cannot be allowed. This writ petition is, therefore, **dismissed** being not maintainable. However, as this is a first kind of case in Pakistan (as per Article 259 of the “*Constitution*” and the Declarations Act, 1975) in which a principle [that mere recommendation of the name of a person for Civil Award, does not create any fundamental right, in favour of the said person for conferment of the such award] has been discussed and finally settled by this Court.

11. Accordingly, copy of this judgment be transmitted to the Respondents [Secretary, Cabinet, Division, Islamabad; Secretary to Prime Minister, Prime Minister’s Office, Constitution Avenue, Islamabad; Secretary, Ministry of Planning, Development & Reforms, Islamabad; Secretary, Ministry of Defence, Rawalpindi Cantt. and Director General, Federal Government Educational Institutions (Cantt/Garrison) Directorate, Rawalpindi, Cantt.] for preparing a proper mechanism/criteria about the recommendation process by the Agency/Authority with the proper Citation as per the provisions of the *Act* [the Decorations Act, 1975]; the *Instructions* [General Instructions and Legal Provision for Making Recommendations for Pakistan Civil Awards]; the *Notification* [dated 13.06.2022, issued by the Cabinet Division] and the *Rules* [the Rules of Business, 1973] before finalizing and then forwarding the matter to the concerned Division or Committee in order to avoid further litigation like this, which has been put to end.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE