

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1629/2018

Muneer Hussain

Versus

National Police Foundation through its Director General

Date of Hearing:	06.12.2018
Petitioner by:	Mr. Arshad Mehmood, Advocate.
Respondents by:	Mr. Baber Saeed Butt, Advocate. Mr. Nadeem Khan Khakwani, learned Assistant Attorney-General.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Muneer Hussain, has voiced his grievances against his parent department (National Police Foundation) not to take him back on duty after completion of his deputation period.

2. Learned counsel for the petitioner submitted that on 31.12.2003, the petitioner was appointed as a Naib Qasid in the National Police Foundation ("N.P.F."); that vide office order dated 11.02.2014, the petitioner was sent on deputation to the National Highways and Motorway Police ("N.H. & M.P."); that after serving as a deputationist for more than thirteen years, the petitioner was repatriated to his parent department; that after the petitioner's representation against his repatriation was turned down on 30.03.2017 by the N.H. & M.P., he invoked the jurisdiction of this Court by filing writ petition No.3301/2017; that vide order dated 06.03.2018, the said writ petition was dismissed; that in the said order dated 06.03.2018, this Court had observed that the petitioner's parent department could not refuse to take the petitioner back in service simply because he had served as a deputationist for a long period; that despite the said observation, the petitioner's parent department is denying the petitioner from his right to rejoin his duties; that such denial amounts to a violation of the petitioner's fundamental right; and that the petitioner has been deprived of his right of livelihood by the respondent. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief prayed for therein.

3. On the other hand, learned counsel for the respondent raised an objection to the maintainability of the instant writ petition on the ground that a writ petition could not be issued to the N.P.F. which was not a person performing functions in connection with the affairs of the Federation. Furthermore, it was submitted that the petitioner had not placed his appointment letter on the record; that in fact the petitioner was employed by the National Police Foundation (Security Services) to whom a writ cannot be issued by this Court; that vide letter dated 08.02.2005, the N.H. & M.P. had repatriated the petitioner but he had not joined his duties in his parent department; that again on 02.07.2014, the petitioner was relieved from his duties in the borrowing department; and that the petitioner was not permitted to rejoin his duties in his parent department since he had remained in N.H. & M.P. service for more than ten years. Learned counsel for the respondent prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. Before going into the merits of the case, I deem it appropriate to decide, in the first instance, the objection raised by the learned counsel for the respondent to the maintainability of the instant petition.

6. The question whether a writ petition is maintainable against the N.P.F. came to be considered by this Court in writ petition No.1573/2010, titled "Dr. Muhammad Aslam Khaki Vs. Khawaja Khalid Farooq Khan, etc.". Vide judgment dated 05.07.2017, this Court held that a writ petition against the N.P.F. was not maintainable. In this regard, the relevant portion of the said judgment, is reproduced herein below:-

"16. The preliminary objection on maintainability of the petition requires to be addressed at the first instance because according to respondents the National Police Foundation is not a person performing functions in connection with the affairs of Federation, therefore, the Writ Petition is not maintainable. Admittedly, the foundation is a trust, established & registered under Charitable Endowment Act, 1890 with the objects to provide welfare schemes for the serving & retired members of the police force and their dependants. The foundation retains character of a trust which

functions on the basis of no profit no loss for its beneficiaries. Its constitution envisaged the administration of foundation through committee of administration which comprises several officers including Secretary Ministry of Interior & D.G. FIA as Ex-Officio Chairman & Members. However, the objects and aims set in the Constitution of Foundation do not relate to functions of federation. The foundation is neither a department of Federal Government nor an autonomous body created through a statute, therefore, cannot be called a person performing functions in connection with the affairs of federation within the meaning of Article 199 of the Constitution. It is clear from record that neither the functions assigned to the foundation pertain to the sovereign functions of the state nor does it receive funds from the state for achievement of its aims and objectives. The Hon'ble' Supreme Court in case titled as "Salah-ud-Din Vs Frontier Sugar Mills & Distillery Ltd.: [PLD 1975 SC 244] held that "private organizations or persons as distinguished from Government or semi-Government agencies and functionaries cannot be regarded as persons performing functions in connection with affairs of Federation or Province simply because their activities happened to be regulated by laws and by State."

17.

18. *The above discussion leads to the conclusion that present writ petition as well as connected petitions mentioned in Para-1 suffer from maintainability, therefore, the cause of action about purported illegal creation of plots cannot be adjudged as it might prejudice case of either party before the Court of competent jurisdiction.*

19. *In view of above, the referred petitions are dismissed due to lack of jurisdiction with observation that petitioners may avail remedy before the Court of competent jurisdiction. No order as to costs."*

7. Earlier, the Division Bench of this Court, in judgment dated 28.03.2016, passed in I.C.A. No.218/2015 had also held that the N.P.F. is not a person performing functions in connection with the affairs of the Federation and, therefore, a writ petition against the same is not maintainable. The relevant portion of the said judgment, is reproduced herein below:-

"6. Having perused the relied judgment, it is observed that in the said writ petition, the objection to the maintainability of writ petition was neither specifically agitated nor was discussed. In a number of reported judgments of the Hon'ble Supreme Court e.g. PLD-2011-SC-132 & 2001-SCMR-1890, it is held that the Charitable Trust are not amenable to the jurisdiction under article 199 of the Constitution of Islamic Republic of Pakistan. We restrain ourselves from giving any observation about the act of the cancellation of the plot of the respondent No.1 by the appellants on the pretext of the outstanding amount of Rs.600/- as same may prejudice case of the parties and it is the domain of the court of ordinary jurisdiction after recording of evidence.

In view of above discussion, the instant appeal is allowed and the impugned judgment is set-aside and writ petition is hereby dismissed."

8. I have been given no reason to take a view different from the one taken by this Court in the above referred judgments regarding the maintainability of a writ petition against the N.P.F.

9. In view of the above, this petition is dismissed as not maintainable. The petitioner is at liberty to agitate his grievance against the N.P.F. before a Court of competent jurisdiction.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2018.

(JUDGE)

*Qamar Khan**

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