

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.712 of 2020

Zaheer Ahmad Qureshi
Vs
Federation of Pakistan, etc

Date of hearing: 14.05.2020

Petitioner By: Shah Khawar Advocate.

Respondents by: Ch. Abdul Jabbar, AAG, Cdr. Imtiaz Hussain,
Dy. JAR Naval Headquarter, Lt. Cdr. Shahid
Waqar Staff Officer, Syed Awab Akhtar, Admin
Officer, Syed Abid Hussain, A/Superintendent.

Ghulam Azam Qambrani, J: Through this petition, the petitioner has invoked the jurisdiction of this Court filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

"It is therefore respectfully prayed that the instant writ petition may kindly be accepted and this Hon'ble Court may be pleased to order the following:-

- a. Hold and declare that this petition is maintainable in view of plethora of law laid down by the Hon'ble Apex Court in cases reported at 2012 SCMR 1229 & PLD 2007 SC 498, PLD 2015 SC 401 & SCMR 1530.*
- b. That placing the petitioner before the forum under Pakistan Navy Ordinance, 1961 amounting to altering the terms of the service of the petitioner which was illegal and against the law laid down in 2018 SCMR 598.*
- c. That the action of the Pakistan Naval authorities to proceed under the PNO beside being violation of the terms of the service was also liable to be struck down being discriminatory and in violation of article No. 25 of the Constitution of 1973 as well as the dictum law laid down by the Apex Court in 2017 SCMR 1572.*
- d. That the trial by the General Court Martial of the petitioner in the above drawback was*

without jurisdiction, corum non judice and malafide, therefore, illegal, void ab initio and a colourful exercise of authority.

- e. *To set aside the sentence awarded by the General Court Martial and the judgment passed by Naval Court of Appeals being unjust, unlawful, without jurisdiction, corum non judice and malafide.*

Any other relief which this Hon'ble Court deems fit and proper may also be awarded."

2. Briefly stated facts of the case are that the petitioner earlier filed a W.P No. 2171/2019 against the respondents, challenging his conviction and sentence passed by the Pakistan Naval Authorities in terms of Pakistan Naval Ordinance, 1961, whereby he was convicted and sentenced to five years R.I, dismissal from service and confiscation of properties and fine of Rs. 7.5 Million and in case of default to further undergo one year & six months R.I. which was disposed of by this Court vide order dated 24.12.2019, by converting the said petition into Review Petition, as envisaged under section 136 of the Pakistan Navy Ordinance, 1961, the said petition was transmitted to the Chief of Naval Staff, Pakistan Navy with the following observation;-

"For what has been discussed above, instant writ petition stands disposed-of by converting the same into Review Petition as envisaged under section 136 of the Pakistan Navy Ordinance, 1961 and be transmitted to the Chief of Naval Staff, Pakistan Navy to decide the same in accordance with law. However, the Chief of Naval Staff is also equipped with the additional powers in terms of section 153 to 160 of the Pakistan Navy Ordinance, 1961 including, but not limited to suspension of the sentence awarded to the petitioner, such powers can also be exercised by the Chief of Naval Staff under his own wisdom while considering the facts and record of the case through a speaking order."

It shall be expected from the Chief of Naval Staff to decide all these questions within period of thirty days and shall submit the same before this Court through Registrar of this Court. In case, the same is not decided within the stipulated time, petitioner may approach this Court afresh."

In view of the above, the petitioner availed the remedy before the Chief of Naval Staff for review of finding/ sentence for migration, remission, commutation or pardon of punishment but, without waiting for the result of that Review Petition, the petitioner has filed the instant writ petition.

3. Vide order dated 20.4.2020 report and parawise comments were called for from respondent No.2. Respondents No.1 to 3 filed para-wise comments wherein raised objections on the maintainability of the instant petition on the ground that the petitioner has already availed the opportunity/ forum of appeal before the Naval Court of Appeals (COA) against his conviction by the General Court Marshal (GCM) and he has also availed the remedy available to him for filing petition before Chief of Naval Staff for review of finding/sentence, remission, commutation or pardon of punishment in term of Section 138-A, 136 & 153 of the Navy Ordinance, 1961; that the petition is not maintainable in terms of Section 140 of the Pakistan Navy Ordinance, 1961; that the Chief of Naval Staff considered the review petition of the petitioner whereby the punishment of five years R.I was reduced to four years R.I as empowered under section 153 (ii) of the Pakistan Navy Ordinance, 1961; that the petitioner has not assailed the order passed in Review Petition vide order dated 09.03.2020, hence this petition has become infructuous, therefore, is not maintainable.

4. In view of the above mentioned facts and circumstances, as the petitioner has filed the instant petition without waiting for the result of his Review Petition by the Chief of Naval Staff, which has been decided by the Chief of Naval Staff vide order dated 09.03.2020, whereby conviction and sentence of the petitioner has been reduced from five years R.I to four years R.I, as such, at the most it gives a new cause of action to the

petitioner after the decision by the Chief of Naval Staff dated 09.03.2020, therefore, this petition has become infructuous.

6. In view of the above situation, the petitioner, if so desired, may challenge the said conviction. This petition is disposed-of as having become infructuous.

Ghulam Azam Qambrani
Judge

Announced in open Court on 20/05/2020.

Judge

S.Akhtar