Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.2165 /2019

Iftikhar Ahmed etc.
Vs
Federation of Pakistan etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	10.01.2022	Mr. Liaquat Ali Qasim, Advocate for the petitioners.

The Petitioners are former employees of Pakistan Navy. They after serving for a considerable period in Pakistan Navy were discharged from service with pension. The grievance of the petitioners is with respect to refusal on part of Pakistan Navy to commute their pension. In this behalf the record shows that letters were written to the competent authority but in the replies the Department has turned down the request on the basis that the same is not permissible under the relevant notification /rules and the commutation can only be granted where the length of service is thirty years or more, which the petitioners admittedly do not have.

2. Learned Counsel for the petitioners, *inter alia*, contended that the petitioners were discharged from service with pension, hence

there is no legal impediment to commute the pension.

3. Learned Counsel for the petitioners was confronted with the maintainability of the instant petition in light of bar provided in Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution). In response to the referred query of the Court learned counsel submitted that where any action taken by Armed Forces is based on *mala fide* or without jurisdiction or otherwise is *coram non judice*, a writ petition is maintainable; reliance was placed on ***Shahida Zahir Abbasi versus President of Pakistan*** **(PLD 1996 Supreme Court 632)**, ***Sabur Rehman versus Government of Sindh*** **(PLD 1996 SC 801)**, ***Rana Muhammad Naveed versus Federation of Pakistan*** **(2013 SCMR 596)** and ***Ghulam Abbas versus Federation of Pakistan*** **(PLD 2009 Supreme Court) 866**) and ***Tahira Almas versus Islamic Republic of Pakistan*** **(PLD 2002 Supreme Court 830)**.

4 Arguments advanced by learned counsel for the petitioners have been heard and the documents placed on record examined with his able assistance.

5. The grievance of the petitioners is mentioned in the opening paragraph of the judgment, hence need not be repeated. This court has the jurisdiction to undertake judicial review of the executive actions under Article 199 of the Constitution; however, certain exclusions have been made in the form of ouster of jurisdiction or bar to the same, which are provided in Article 199(3) *ibid*. Under the referred clause of the Constitution this Court does not have the jurisdiction to adjudicate upon matters which fall within the terms and conditions of service of the Armed Forces. The superior Courts of the country have interpreted the said bar as not absolute and have held consistently that where the orders passed by the Armed Forces, with respect to the service matters of their employees, are *mala fide*, *coram non judice* or without jurisdiction the Courts shall have jurisdiction under Article 199(1) of the Constitution. In this behalf the judgments relied upon by the learned counsel for the petitioners are apt and affirm the said principle.

6. As noted above the Respondents are refusing to commute the pension of the petitioners on the premise that they have not

completed 30 years of service which is mandatory for the said purpose, as provided in Notification dated 7.1.2011 issued by Ministry of Defense, Government of Pakistan. The said refusal by the Pakistan Navy cannot, in any manner, be regarded as action based on *mala fide*, without jurisdiction or *coram non judice*, hence the bar under Article 199 (3) of the Constitution is applicable. Since the matter in hand pertains to the terms and conditions of service of Armed Forces, hence the instant petition is not maintainable and is liable to be dismissed on the said ground.

7. For the above reasons the present writ petition is dismissed *in limine* as the same is not maintainable.

(AAMER FAROOQ)
JUDGE

M.Naveed