

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No.D-7097 of 2016

Order with signature of Judge

Fresh Case:

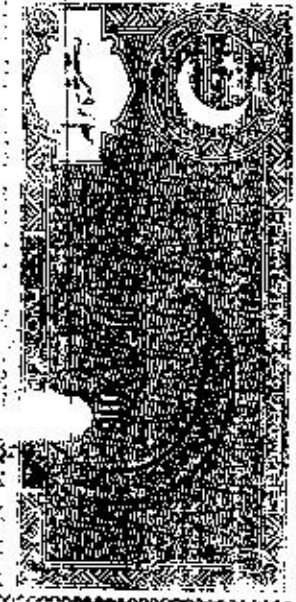
1. For order on Misc. No.33846/2016 (Urgent).
2. For order on Misc. No.33847/2016 (Exemption).
3. For order on Misc. No.33848/2016 (Stay).
4. For hearing of main case.

28.12.2016

Mr. Faisal Siddiqui, Advocate for Petitioners.

1. Urgency granted.
2. Exemption granted subject to all just exceptions.

3&4. Mr.Faisal Siddiqui, counsel appearing for the petitioners, contends that the instant petition challenges The Sindh (Repeal of the Police Order 2002 and Revival of the Police Act 1861) Act 2011 in terms of which, inter alia, the Police Order 2002 has been repealed. The counsel submits that the Police Order 2002 enjoyed protection under Article 142(b) of the Constitution of the Islamic Republic of Pakistan, 1973, which confers concurrent jurisdiction of Majlis-e-Shoora (Parliament) and a Provincial Assembly to make law with respect to the "Criminal Law", "Criminal Procedure" and "Evidence". Per counsel, there was no specific entry in the concurrent list to confer the jurisdiction either on the Parliament or a Provincial Assembly to legislate the laws for the Police, and such laws were legislated on the basis of entry Nos.1 and 2 available in the concurrent list. Per counsel, after these entries were removed from the concurrent list vide Eighteenth Amendment, the Provincial Government misconstrued the same having fallen in its domain and legislated the Act 2011, which, inter alia, repealed the Police Order 2002, which was a Federal Legislation. Per counsel, through the very Eighteenth Amendment, the introduction of



Sub-Clause (b) to Article 142 instantly filled the void and empowered the Majlis-e-Shoora and the Provincial Government to legislate the matters related to Criminal Law, Criminal Procedure and Evidence, rendering the same as an occupied field and accordingly the Provincial Legislature was not entrusted with singular authority of legislating in respect of these subjects, rather these subjects continued to be legislated by the Majlis-e-Shoora and the Provincial Government concurrently. Accordingly, the singular act of the Provincial Government which resulted in the promulgation of Act 2011 has no Constitutional merit. Per counsel, even otherwise, Article 143 provides that where there is an inconsistency between the Federal and Provincial Laws, the Federal Laws, of course would prevail, therefore, the repeal of the Federal Law by the Provincial Legislators through the Act 2011 is indirect violation of these specific Constitutional provisions.

It is next contended that the Government of Sindh is about to remove the respondent No.7, Inspector General of Police Sindh, which per Police Order 2002 as well as Sindh Government Rules of Business 1986 (through Schedule - IX read with Item 14 Column - 4 of Schedule-I), enjoys a tenure of three years of posting. Counsel in this regard has referred to the judgments of the Apex Court delivered in the case of *Ms. Anita Turab vs. Federation of Pakistan (PLD 2013 SC 195)* as well as *Haider Ali and another vs. DPO Chakwal and others (2015.SCMR 1724)*. In the case of *Haider Ali (supra)*, the Apex Court at Para 9(v) has reaffirmed the principle that the respective Provincial and Federal heads of police shall have continued posting of three years, therefore, the Provincial Government be restrained from removing the respondent No.7 from his present position of Inspector General of Police Sindh. Counsel has further contended that it is an open secret that the respondent No.7 has been sent on forced leave and there are strong apprehension that this would culminate in the removal of the respondent No.7 which can be ascertained





from the review of the press reports, in particular those where many retired police officers made representation to the higher ups to intervene in the matter related to the respondent No.7. The learned counsel further submitted that subsequent to the above forced leave notification, in the last few days, the Provincial Government has attempted to interfere in the process of recruitment of new police force by reducing the passing marks of NTS from 40 to 35 solely aimed to induct individuals, who were initially considered "fail", thereby mutilating merit.

Contentions raised require consideration. Let notices be issued to the respondents as well as Advocate-General Sindh and Attorney General for Pakistan for 12.01.2017, till then the respondent No.7 shall not be dealt with in violation/contradiction of the judgment of the Apex Court, referred to above by his removal.



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 Sd/- CHIEF JUSTICE
~~_____~~
 Sd/- JUDGE