

02

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

C.P. No. D- of 2022

- 1. MR. SHAHID AHMED SHAIKH,**
*Adult, Muslim, presently posted as:
Additional Prosecutor General Sindh
at Circuit Court, High Court Building
at Hyderabad.*
(Attorney of Petitioner No.02 to 18)

- 2. NAZARMUHAMMAD**
*S/o Abdul Rasheed Memom,
Adult, Muslim, presently posted as
Additional Prosecutor General Sindh
at Circuit Court, High Court Building
at Hyderabad.*

- 3. SHAHZADO SALEEM**
*S/O Bux All Nahiyon,
Adult, Muslim, presently posted as:
Additional Prosecutor General Sindh
at Circuit Court, High Court Building
at Hyderabad.*

- 4. SHAWAK RATHORE**
*S/o Morio, Adult, Hindu,
presently posted as Deputy Prosecutor
General Sindh at Circuit Court, High
Court Building at Hyderabad.*

- 5. MUHAMMAD S/o Kaloo Noonari,**
*Adult, Muslim, presently posted as:
Deputy Prosecutor General Sindh
at Circuit Court High Court Building
at Hyderabad.*

- 6. RAMAISHAN D/O Shawak Ram,**
*Adult, Hindu, presently posted as:
Assistant Prosecutor General Sindh
at Circuit Court High Court Building
at Hyderabad.*

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7. SANA MEMON

*D/O Muhammad Younis,
Adult, Muslim, presently posted as:
Assistant Prosecutor General Sindh
at Circuit Court, High Court Building
at Hyderabad.*

8. ABDUL WAHEED BIJARANI

*S/o Najamudin Bijarani, Adult, Muslim,
presently posted as Assistant Prosecutor
General Sindh at Circuit Court,
High Court Building, Hyderabad.*

9. FAYYAZ HUSSAIN

*S/o Muhammad Aachar Saabk,
Adult, Muslim, presently posted as:
Assistant Prosecutor General Sindh
at Circuit Court High Court Building
at Hyderabad.*

10. ZAFAR AHMED KHAN

*S/o Muzffar Khan, Adult, Muslim,
presently posted as: Additional
Prosecutor General Sindh at Karachi.*

11. SAYED MEERAL SHAH

*S/o, Adult, Muslim, presently
posted as Additional Prosecutor
General Sindh at Karachi.*

12. MUHAMMAD IQBAL AWAN

*S/o Muhammad Boota Awan,
Adult, Muslim, presently posted as:
Additional Prosecutor General Sindh
at Karachi.*

13. MUNTAZIR MEHDI MEMON

*S/o Khadim Hussain,
Adult, Muslim, presently posted as:
Additional Prosecutor General Sindh
at Karachi.*

14. ZAHOOR SHAH

*S/o Noor Ahmed Shah,
Adult, Muslim, presently posted as:
Additional Prosecutor General
Sindh at Karachi.*

15. FAHEEM HUSSAIN

*S/o Ghulam Hussain Panhwar,
Adult, Muslim, presently posted as:
Deputy Prosecutor General Sindh
at Karachi.*

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16. SAYED SARDAR ALI SHAH

S/o Sayed Jan All Shah,
Adult, Muslim, presently posted as:
Additional Prosecutor General at
High Court Building at Sukkur.

17. SHAFI MUHAMMAD MEHAR

S/o Muhammad Iqbal Mehar,
Adult, Muslim, presently posted as:
Deputy Prosecutor General at
High Court Building
at Larkana.

18. KHALIL AHMED MAITLO

S/o Not Known, Adult, Muslim,
presently posted as:
Deputy Prosecutor General
at High Court Building at Sukkur.

**(Petitioner No.2 to 18 through their
Attorney, Petitioner No.1)**
Petitioners

Versus

- 1. Province of Sindh,**
Through Chief Secretary,
Government of Sindh.
- 2. The Finance Secretary,**
Government of Sindh.
- 3. The Secretary Law Department,**
Government of Sindh.
- 4. The Accountant General,**
Sindh, Karachi.....

Respondents

**CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF
ISLAMIC REPUBLIC OF PAKISTAN, 1973**

1. That, the petitioner is law abiding citizen of Pakistan and are endowed with fundamental rights as guaranteed in the constitution of Islamic Republic of Pakistan 1973.

07

2. That, the petitioners belongs to the Sindh Criminal Prosecution Service (Constitution, Functions And Powers) Act, 2009. The preamble of the Act, 2009 is reproduced as under:

WHEREAS it is expedient to amend the Sindh Criminal Prosecution Service (Constitution, Functions And Powers) Act, 2009 in the manner here in after appearing;

It is hereby enacted as follows:-

1. (1) **This Act may be called the Sindh Criminal Prosecution Service (Constitution, Functions and Powers) (Amendment) Act, 2015.**

(2) It shall come into force at once.

2. **In the Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009, hereinafter referred to as the said Act, in section 2 -**

“(1) “members of the service” means and includes Prosecutors, officers and other staff of the service;”;

3. That, the petitioners are working under the authority of Prosecutor General Sindh, it was formed through the aforementioned Act for the purpose to protect the rights and interest of the people of Pakistan and investigate the matters pertaining criminal acts.
4. That, the prosecution assist the Honourable Courts in matters of Criminal Procedurals and enhancement of rule of law with the couple fact to enlighten the rights of citizens in society. The prosecution also provides their services in providing legal assistance to the poor and needy people on behalf of the state in the very interest of national integrity and fundamental rights.

09

5. That, the petitioners are rendering their services (from BS-17 to BS-22) and they solely depend upon the salary and maintain their budget in accordance with income. They had also forward applications to the competent authority in order to get reversal/refund of the deducted amount from their Net Salary Accounts on account of unwillingness/non-acceptance.
6. That, soon after the publication of the impugned notification, the Finance Department, Government of Sindh pleased to issue an official Letter bearing No.FD(SR-I)01(02)/2022(SFRF) Karachi on dated.26.08.2022 to the Accountant General Sindh and all the District Accounts Officers Sindh subject captioned as same of the impugned Notification to exempt the cadre officers and staff of Sindh High Court and its Benches and Circuit Courts, Judicial Officers and staff of District and Civil Courts of Sindh from deductions on account of contricution towards the "Sindh Flood Relief Fund". Even then, the deduction of the petitioners' from their net salary accounts is prevailing discrimination.
7. That, the salary fall within the ambit of fundamental rights under the garb of Chapter Two of the Constitution of Islamic Republic of Pakistan, 1973.
8. That, the salary defined in different modes by statutes, as per Civil Servants Act, 1973 defined as under:

Section 2(d):- "pay" means the amount drawn monthly by a civil servant as pay, and includes technical pay, special pay, personal pay and any other emoluments declared by the prescribed authority to be pay;
9. That, the term of salary also defined in Section 12 of Income Tax Ordinance, 2001 as under:-

11

Salary:-

- (1) **Any salary received by an employee in a tax year, other than salary that is exempt from tax under this Ordinance, shall be chargeable to tax in that year under the head "Salary".**
- (2) **Salary means any amount received by an employee from any employment, whether of a revenue or capital nature, including-**
 - (a) **any pay, wages or other remuneration provided to an employee, including leave pay, payment in lieu of leave, overtime payment, bonus, commission, fees, gratuity or work condition supplements (such as for unpleasant or dangerous working conditions);**
 - (b) **any perquisite, whether convertible to money or not;**
 - (c) **the amount of any allowance provided by an employer to an employee including a cost of living, subsistence, rent, utilities, education, entertainment or travel allowance, but shall not include any allowance solely expended in the performance of the employee's duties of employment;**
 - (d) **the amount of any expenditure incurred by an employee that is paid or reimbursed by the employer, other than expenditure incurred on behalf of the employer in the performance of the employee's duties of employment;**
 - (e) **the amount of any profits in lieu of, or in addition to, salary or wages, including any amount received-**
 - (i) **as consideration for a person's agreement to enter into an employment relationship;**
 - (ii) **as consideration for an employee's agreement to any conditions of employment or any changes to the employee's conditions of employment;**
 - (iii) **on termination of employment, whether paid voluntarily or under an agreement, including any compensation for**

redundancy or loss of employment and golden handshake payments;

- (iv) **from a provident or other fund, to the extent to which the amount is not a repayment of contributions made by the employee to the fund in respect of which the employee was not entitled to a deduction; and**
- (v) **as consideration for an employee's agreement to a restrictive covenant in respect of any past, present or prospective employment;**
- (f) **any pension or annuity, or any supplement to a pension or annuity; and**
- (g) **any amount chargeable to tax as "Salary" under section 14.**

10. That, nowadays, the entire country facing the flood disaster and heavy rains, in this respect, the number of peoples, their agricultural lands, their livestock and houses were seriously damaged and sustained heavy financial loss by the individuals.

11. That, the Government of Sindh, Finance Department pleased to issue Notification dated.24.08.2022, while establishing the Sindh Flood Relief Fund for affectees of rain and flash floods throughout the Province of Sindh in the name and style of "Sindh Flood Relief Fund" to help out the affected persons whereby the Finance Department with the approval of Government of Sindh directed to District Accountant Officers through Accountant General of Sindh, Karachi for deduction from the net monthly salaries under the following categories:-

Category	Rate of Deduction
Chief Minister, Sindh / Ministers / MPAs (PPPP only) / Advisors / Special Assistants to Chief Minister / Parliamentary Secretaries	One Month's Net Salary
BPS-17 to 22	5 Day's Net Salary
BPS-01 to 16	2 Day's Net Salary

12. That, the impugned notification has been issued in respect of all Civil Servants, they are working under the Finance department, Government of Sindh, this action is unilateral on the part of Government in deducting the salary of the Education employees including the petitioners is without jurisdiction and de horse the provision of law.
13. That, the Government decided to deduct the portion of salary without consent, willingness of the Law Officers & Ministerial Staff of the Prosecutor General Sindh(the petitioners) and such action of the Government is sheer violation of fundamental rights as enumerated in the Constitution of Islamic Republic of Pakistan, 1973.
14. That, no doubt, the entire country is suffering from the heavy irreparable loss on account of natural disaster/flash flood spell of heavy rains. It is pertinent to mention here that the families and blood relatives of all employees are affected, therefore, petitioners and Law Officers & Ministerial Staff of the Prosecutor General Sindh deems to be self-suffers, therefore, they are under the obligations to serve for needy peoples particularly their nearest and descendants.
15. That, at the time of COVID-19 where the whole world was affected and at that time, the Government issued allowances and at present, where the civil servants are affected badly due to flash flood and suffered irreparable loss and despite of issuing the allowances, the deduction in the salary is in violation of fundamental rights and principles of policy as conferred in Part-II of the Constitution of Islamic Republic of Pakistan, 1973.
16. That, the meaning of the term "donation" in the Oxford Dictionary is something that is given to a person or organization such as charity, in order to help them. Moreover, the expression "donation" implies that the sum

- 17
- is being given as aid with the view to help the person/ organization. Donation is the voluntary act of a person who intends to donate.
17. That, the employer neither has the power nor any authority to deduct the salary or any portion thereof of any employee, unilaterally, under the garb of donation. A person cannot be forced to donate. The moment force is applied, the act of the donor does not remain voluntary, and it amounts to forcible deduction, which is grossly different from the donation.
 18. That, number of Countries all over the world have already raised the Flood Relief Fund in Pakistan through various modes which is amounting in Billion Dollars. Hence, the Law Officers & Ministerial Staff of the Prosecutor General Sindh (the petitioners) had shown their unwillingness towards the said deduction in salary and in this regard, they had moved applications to the Accountant General Sindh through the office of Prosecutor General Sindh being the competent forum, but no fruitful result has been incurred yet.
 19. That, the petitioners being aggrieved persons within the ambit of Article 199 of the Constitution of the Islamic Republic of Pakistan, and their fundamental rights guaranteed and protected under the umbrella of the constitution of Islamic Republic of Pakistan, 1973 have seriously been infringed.
 20. That, under such compelling circumstances the petitioners have no other efficacious and alternate remedy left, but to knock the door of this Honourable court by invoking constitutional jurisdiction.
 21. That it will be in the best interest of justice if this Constitutional Petition is allowed.

That the petitioner prays as under:

19

PRAYER

- (A) That, this Honourable Court may very graciously be pleased to declare the impugned notification as null and void and ab initio in respect of Law Officers & Ministerial Staff of the Prosecutor General of Sindh.
- (B) That, this Honourable Court may very graciously be pleased to declare the deduction of salary of Law Officers & Ministerial Staff of the Prosecutor General of Sindh under the garb of donation is forceful, unwillingness and non-consented.
- (C) That, this Honourable Court may very graciously be pleased to declare the impugned action of official respondents is sheer violation of fundamental rights because the term 'salary' falls under the chapter II of Constitution of Islamic Republic of Pakistan, 1973.
- (D) That, this Honourable Court may very graciously be pleased to suspend the operation of impugned notification to the extent of Law Officers & Ministerial Staff of the Prosecutor General of Sindh as Departmental Employees.
- (E) That, the act of the Government functionaries, while deducting the amount under the garb of Notification dated.24.08.2022 is ab-initio & unlawful same be reversed to the net salary accounts of the petitioners' in respect of the Employees of Prosecution Department forthwith.
- (F) That any other relief which this Honourable Court may deem fit and proper to award the petitioners.

Hyderabad

Dated, ____-09-2022

Advocate for Petitioner