

ORDER SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT

Intra Court Appeal No. 19 Of 2023

Malik Waseem ur Rehman. Vs. The Province of Punjab through Deputy Commissioner/ Head of District Administration, Rahim Yar Khan and two others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signatures of Judge, and that of parties or counsel, where necessary.
	08.02.2023	Syed Mujahid Ayub Wasti, Advocate for the appellant.

This Intra Court Appeal has been filed against the order dated 23.01.2023 passed by the learned Single Judge in Chambers in Writ Petition No.6385 of 2021, whereby the petition filed by the appellant under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, was dismissed.

2. The brief facts necessary for the disposal of the instant appeal are that the appellant was serving as Accountant in the Municipal Committee, Liaquatpur however, was proceeded under the Punjab Employees Efficiency, Discipline & Accountability Act, 2006 and on the basis of Inquiry Report compiled by the Chief Officer, Municipal Committee, Liaquatpur/respondent No.3, was terminated from service vide order dated 07.03.2018, representation against which was also dismissed by respondent No.3 vide orders dated 01.10.2018 and 16.11.2020. Feeling aggrieved, the appellant filed an appeal before the Deputy Commissioner, Rahim Yar Khan (respondent No.1), which appeal, vide order dated 21.05.2021, was partially accepted and penalty of termination from service was converted into "*compulsory retirement from service*". The Municipal Committee, Liaquatpur filed another petition before the Deputy

Commissioner, Rahim Yar Khan (respondent No.1) for review of the aforesaid order dated 21.05.2021, which petition by the Municipal Committee, Liaquatpur was accepted by the Deputy Commissioner, Rahim Yar Khan (respondent No.1) vide order dated 07.07.2021. The validity and authenticity of the order dated 07.07.2021, passed by the Deputy Commissioner, Rahim Yar Khan (respondent No.1) was assailed through the Writ Petition No.6385 of 2021, which petition was dismissed, hence this appeal.

3. At the very outset, a question was put to the learned counsel for the appellant about how the instant Intra Court Appeal was competent in view of the proviso to subsection (2) of section 3 of the Law Reforms Ordinance, 1972. The learned counsel for the appellant in response to our query regarding the maintainability of the instant Intra Court Appeal, submitted that the appellant had challenged the order dated 07.07.2021 passed by the Deputy Commissioner, Rahim Yar Khan/respondent No.1 through the Writ Petition No.6385 of 2021 against which order no appeal was provided, therefore, the instant Intra Court Appeal was maintainable. The learned counsel for the appellant also submitted that the learned Single Judge in Chambers had erred in facts and law while passing the order dated 23.01.2023. The learned counsel for the appellant also submitted that the Deputy Commissioner, Rahim Yar Khan (respondent No.1), had no authority to pass the order dated 07.07.2021.

4. We have heard the learned counsel for the appellant and perused the record.

5. In order to address the afore-referred proposition of law that how the instant Intra Court Appeal was competent in view of the proviso to subsection (2) of section 3 of the Law Reforms Ordinance, 1972, for the facility of

reference, it would be appropriate to reproduce section 3 of Law Reforms Ordinance, 1972:--

"3. Appeal to High Courts in certain cases:

1. An appeal shall lie to a Bench of two or more Judges of a High Court from a decree passed or final order made by a single Judge of that Court in the exercise of its original civil jurisdiction.

2. An appeal shall also lie to a Bench of two or more Judges of a High Court from an order made by a Single Judge of that Court under [clause (1) of Article 199 of the Constitution of the Islamic Republic of Pakistan] not being an Order made under sub-paragraph (i) of paragraph (b) of that clause:

Provided that the appeal referred to in this subsection shall not be available or competent if the application brought before the High Court under Article 199 arises out of any proceedings in which the law applicable provided for at least one appeal or one revision or one review to any Court, Tribunal or authority against the original order.

3. No appeal shall lie under subsection (1) or subsection (2) from an interlocutory order or an order which does not dispose of the entire case before the Court."

The plain reading of the above proviso shows that appeal shall not be available or competent under section 3 of the Law Reforms Ordinance, 1972 before a Division Bench, of this Court if the petition brought before High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 arises out of any proceedings in which the law applicable provided for at least one appeal, one revision or one review to any Court, Tribunal or authority against the original order. This means that *the relevant order may not necessarily be the one which is impugned* in the writ petition but the test is that whether the original order passed in the proceedings

is subject to appeal, revision or review under the relevant law. The august Supreme Court of Pakistan has declared in the case of "*Mst. Karim Bibi and others v. Hussain Bakhsh and another*" (**PLD 1984 SC 344**) as under:-

" 8. After giving our anxious consideration to the arguments urged in support of this appeal we are, however, not impressed by any of the contentions raised. The test laid down by the Legislature in the proviso is that if the law applicable to the proceedings from which the Constitutional Petition arises provides for at least one appeal , against the original order, , then no appeal would be competent from the order of a Single Judge in the constitutional jurisdiction to a Bench of two or more judges of the High Court. The crucial words are the "original order". It is. clear from the wording of the proviso that the requirement of the availability of an appeal in the law applicable is not in relation to the impugned order in the Constitutional Petition, which may be the order passed by the lowest officer or authority in the hierarchy or an order passed by higher authorities in appeal, revision or review, if any, provided in the relevant statute. Therefore, the relevant order may not necessarily be the one which is under challenge but the test is whether the original order passed in the proceedings subject to an appeal under the relevant law, irrespective. of the fact whether the remedy of appeal so provided was availed of or not. Apparently the meaning of the expression "original order" is the order with which the proceedings under the relevant statute commenced. The word "proceedings" has been used in different enactments and has been subject to judicial interpretation in a number of cases wherein it has received either restricted or wide meaning according to the text and subject-matter of the particular statute. I do not consider it necessary to notice the various judgments in which this word was so construed. Suffice it to refer to the case of Nawab Din v. Member Board of Revenue P E D (sic) 1979 S C 846, in which this Court had occasion to examine the scope and meaning of the word as it occurs in section 2 (2) of the Evacuee Property and Displaced Persons Laws (Repeal) Act, 1975. A useful discussion will be found in this case with reference to precedents as the meaning of the term "proceedings". An earlier case of Jan Muhammad and another v. Home Secretary, West Pakistan and others P L D 1968 Lah. 1455, was referred to in this connection and the view taken therein was declared by this Court as the correct enunciation of the law on the subject. In the latter case reference was made to the definition of the term "proceedings" in the book "Words and phrases" which may usefully be reproduced as under ;

"The term 'proceedings' is a very comprehensive term, and, generally speaking, means a prescribed course of action for enforcing a legal right, and hence it necessarily embraces the requisite steps by which judicial action is invoked. A

'proceeding' would include every step taken towards the further progress of a cause in Court or before a Tribunal, where it may be pending. It is the step towards the objective , to be achieved, say for instance the judgment in a pending suit. The proceeding, commences with the first step by which the machinery of the law is put into motion in order to take cognizance of the case. It is indeed a comprehensive expression and includes all possible -steps in the action under the law, from its commencement to the execution of the judgment."

The august Supreme Court in the case of "*Muhammad Aslam Sukhera and others v. Collector Land Acquisition, Lahore Improvement Trust, Lahore and another*" (**PLD 2005 SC 45**), while interpreting the word "original order" under proviso to subsection (2) of section 3 of the Law Reforms Ordinance, 1972 held that the expression "original order" in section 3(2) of the Ordinance, is used in generic sense in contradistinction to orders passed in appeal, revision or review. The word "original" is susceptible to different meanings in the context of a particular statute. It does not always mean "first in order". The expression "original order" in section 3(2) of the Law Reforms Ordinance, 1972 was used in generic sense in contradistinction to orders passed in appeal, revision or review. In "*Macmillan and Company Limited v. K. and J. Cooper*" (**AIR 1924 Privy Council 75**), a case from Bombay jurisdiction, the Privy Council had the occasion to interpret the word "original" in the context of Copyright Act, 1911, as follows: --

"The word "original" does not mean that the work must be the expression of original or invented thought. Copyright Acts are not concerned with the opinion of ideas, but with the expression of thoughts; and in the case of "literary work" with the expression of thought in print or writing. The originality which is required relates to the

expression of the thought; but the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work—that it should originate from the author."

"The mere process of selecting passages from works readily accessible to the public is not, but difficulty in obtaining access to the originals are skill manifested in making or arranging the selection is sufficient to give the character of an "original literary work" to the selection."

In "*Re Oriental Bank*" (**54 L.J. Ch. 481**) it was held on the construction of a clause in the Charter of that Bank that the words "original-holder" of shares did not mean the first allottee, but meant the immediate transferor to the person holding the shares at the time when the phrase became operative i.e. in that case, the winding-up of the company."

In "*Deputy Commissioner/Administrator, District Council, Attock and another v. Lawrencepur Woollen Textile Mills Ltd.*" (**1999 SCMR 1357**), the legality and propriety of a Notification issued by the District Council whereby export tax was levied was brought under challenge. It was held by the Supreme Court of Pakistan that the Notification issued was in substance an "order" for levy of export tax and was, therefore, appealable to the controlling authority under the law. The Supreme Court went on to hold that:--

"2. The respondent-Company is manufacturer of woolen cloth and blankets. By notification, dated 6-12-1976 the export tax was levied by the appellants on woolen cloth and blankets. The respondent-Company filed Writ Petition No.4043 of 1977 in the Lahore High Court, Lahore wherein the legality and propriety of the said notification had been challenged inter alia on the ground that the relevant Rules were not adhered to before levy of the tax."

In "*Vice-Chancellor/Chairman Admission Board University of Health Science, Lahore v. Breeha Zainab*

and another" (**2011 MLD 1652**), the challenge was to the order of refusal of admission to the University of Health Sciences, Lahore. It was held that since a remedy of revision was available against the order of refusal of admission, which was to be treated as original order for the purpose of section 3(2) of the Law Reforms Ordinance, 1972, the Intra Court Appeal was not competent. Further, it is of utmost importance to clarify that availing of such remedy of appeal, revision or review is not a sine qua non to question the maintainability of Intra Court Appeal and it is sufficient if the applicable law in the matter provides such remedy. *It is irrelevant whether such remedy is availed by the aggrieved person or not.* There may be cases where despite the availability of an appeal, revision or review against the original order, such remedy was not actually availed by the aggrieved party. Guidance is sought from the case of "*Syed Arif Raza Rizvi v. Messrs Pakistan International Airlines through Chairman/M.D., Karachi (PLD 2001 SC 182)*", wherein the august Supreme Court has expounded this concept in the following words:

"...The proviso to section 3(2) of the Law Reforms Ordinance (XII of 1972) as amended bars the Intra-Court appeal to a Bench of two or more Judges of the High Court in case the law applicable to the proceedings provided for at least one appeal, revision or review against the original order. In other words the bar under the proviso is applicable, if the law applicable to the proceedings provided for a forum for appeal, revision or review against the original order. This bar under the proviso is attracted in case such a forum is provided under the law applicable, even though the aggrieved party did not actually avail of the remedy provided by means of the appeal, revision or review. This is the only rational and harmonious

interpretation that can be put on this proviso in consonance with the intention of the Legislature..."

In the instant case, the appellant was proceeded under the Punjab Employees Efficiency, Discipline & Accountability Act, 2006 and on the basis of Inquiry Report compiled by the Chief Officer, Municipal Committee, Liaquatpur (respondent No.3), the appellant was terminated from service vide order dated 07.03.2018, the representation against which order, as filed by the appellant, was also dismissed by the Chief Officer, Municipal Committee, Liaquatpur (respondent No.3) vide orders dated 01.10.2018 and 16.11.2020. Feeling aggrieved, the appellant filed an appeal before the Deputy Commissioner, Rahim Yar Khan (respondent No.1), which appeal, vide order dated 21.05.2021, was partially accepted and penalty of termination from service was converted into "*compulsory retirement from service*". The Municipal Committee, Liaquatpur filed another petition before the Deputy Commissioner, Rahim Yar Khan (respondent No.1) for the revising of the aforesaid order dated 21.05.2021, which petition by the Municipal Committee, Liaquatpur was accepted vide order dated 07.07.2021 passed by the Deputy Commissioner, Rahim Yar Khan (respondent No.1). The Deputy Commissioner Rahim Yar Khan (respondent No.1) had the authority under the law to pass the order dated 07.07.2021. Furthermore , section 16 of the Punjab Employees Efficiency, Discipline & Accountability Act,

2006 provides for an appeal against the imposition of any penalty under the said Act whereas section 17 of the Punjab Employees Efficiency, Discipline & Accountability Act, 2006 provides the power of revision. Section 16 and 17 of the Punjab Employees Efficiency, Discipline & Accountability Act, 2006 read as under :-

“16. Departmental appeal and review.—(1) An accused who has been awarded any penalty under this Act may, except where the penalty has been imposed by the Chief Minister, within thirty days from the date of communication of the order, prefer departmental appeal directly to the appellate authority:

Provided that where the order has been passed by the Chief Minister, the accused may, within the aforesaid period, submit a review petition directly to the Chief Minister.

(2) The authority empowered under sub-section (1) shall call for the record of the case and comments on the points raised in the appeal from the concerned department or office, and on consideration of the appeal or the review petition, as the case may be, by an order in writing—

(a) uphold the order of penalty and reject the appeal or review petition; or

(b) set aside the orders and exonerate the accused; or

(c) modify the orders and reduce or enhance the penalty; or

(d) set aside the order of penalty and remand the case to the competent authority, where it is satisfied that the proceedings by the competent authority or the inquiry officer or inquiry committee, as the case may be, have not been conducted in accordance with the provisions of this Act, or the facts and merits of the case have been ignored, with the directions to either hold a de novo inquiry or to rectify the procedural lapses or irregularities in the proceedings:

Provided that where the appellate or review authority proposes to enhance the penalty, it shall by an order in writing—

(i) inform the accused of the action proposed to be taken against him and the grounds of such action; and

(ii) give him a reasonable opportunity to show cause against the action and afford him an opportunity of personal hearing either itself or through a hearing officer; provided that the hearing officer shall only be appointed where the appellate or the review authority is of the rank of Secretary to the Government of the Punjab or above.

(3) An appeal or review preferred under this section shall be made in the form of a petition, in writing, and shall set forth concisely the grounds of objection to the impugned order in a proper and temperate language.

17. Revision.—(1) The Chief Minister, Chief Secretary or the Administrative Secretary or any other appellate authority may call for the record of any proceedings within one year of the order of exoneration or imposition of a penalty, passed by the competent authority or the order of appellate authority, as the case may be, for the purpose of satisfying himself as to the correctness, legality or propriety of such proceedings or order.

(2) On examining the record of the case, such authority may—

(i) uphold the orders of the competent authority or the appellate authority, as the case may be; or

(ii) order the competent authority to hold de novo inquiry; or

(iii) impose or enhance a penalty or penalties:

Provided that no order, prejudicial to the accused, shall be passed under this section unless the accused has been given a reasonable opportunity of showing cause against the proposed action and an opportunity of personal hearing.”

6. This discussion leads us to the indisputable conclusion that when the remedies of appeal and revision were available against the order of imposition of penalty upon the appellant by the “*competent authority*”, which was to be treated as the *original order* for the purpose of section 3(2) of the Law Reforms Ordinance, 1972, then the Intra Court Appeal was not competent and this appeal, being devoid of merit, is therefore **dismissed in limine**.

(**MUHAMMAD AMJAD RAFIQ**) (**SADIQ MAHMUD KHURRAM**)
JUDGE **JUDGE**

Approved for Reporting

Judge.