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Form No: HCJD/C

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Intra Court Appeal No.1089 of 2013

Chief Security Officer ASF BBIA, Islamabad etc.
Vs.

Tariq Ahmed Lodhi, Ex Dy. Assistant Director ASF

Appellants by: **Kh. Imtiaz Ahmed, Standing Counsel**

Respondent: **Mr. Bashir Khan, Advocate for the respondent.**

Date of hearing: **12.02.2015.**

Aamer Farooq, J.- The Instant Intra Court Appeal is directed against judgment dated 29.10.2013 passed by the learned Single Judge in Chambers in Writ Petition No.2528 of 2012.

2. The facts, in brief, are that the respondent was an employee of Airport Security Force and joined the said organization on 15.06.1983 as Inspector and lastly was posted as Assistant Director, Islamabad Airport. The respondent, on account of departmental proceedings initiated against him, was suspended from service vide letter dated 29.06.2012 under section 7 of the Airport Security Force Act, 1975 (the Act) and subsequently vide order dated 20.07.2012 was retired from service under section 13 of the Civil Servant Act, 1973, w.e.f. 19.07.2012. The respondent, being aggrieved of such action, instituted a writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 challenging the order of retirement issued by the appellants. The learned Single Judge in Chambers accepted the writ petition vide judgment dated 29.10.2013 and the appellants were directed to reinstate the respondent.

3. At the outset, learned Standing Counsel was confronted with the query regarding the maintainability of the instant appeal which has been filed under section 3 of the Law Reforms (Amendment) Act, 1972. The learned Standing Counsel submitted that the employees of abovementioned

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organization are civil servants and therefore, jurisdiction of the High Court under Article 199 is barred in light of Article 212 of the Constitution.

4. Learned counsel for the respondent submitted that under the Airport Security Force (Discipline) Rules, 1977, framed under the Act a right of appeal is provided to any person aggrieved by the order made by the officer holding departmental proceedings. The relevant rule in this behalf is 13 and is as follows:

"13. Appeal. (1) A person aggrieved by an order made in pursuance of the finding of the summary Court or the officer holding departmental proceedings may within thirty days of the receipt of the order, prefer an appeal---

- (a) if the order is made by an officer below the rank of Force Commander; to the Force Commander;*
- (b) if the order is made by the Force Commander, to the Director-General; and*
- (c) if the order is made by the Director-General to the Federal Government.*

(2) An appeal shall be addressed to the authority competent to hear the appeal under sub rule (1), and shall be submitted, through the competent authority, in the form of a complete memorandum bearing all material facts relied upon by the appellant, alongwith a copy of the impugned order, but shall not contain any disrespectful language.

(3) An appeal may be withheld by the competent authority if---

- (a) it does not comply with the provisions of sub-rule (2); or*
- (b) no new facts or circumstances are adduced which afford grounds for reconsideration of the case; or*
- (c) it's not preferred within thirty days of the receipt of the orders appealed against and no reasonable cause is shown for the delay.*

(4) in case an appeal is withheld under sub-rule (3), the appellant shall be informed of the withholding together with the reason therefor.

(5) No appeal shall lie against an order passed by the competent authority for withholding the appeal."

Learned counsel further submitted that even if an employee of Airport Security Force is considered to be a civil servant even then a right of appeal is provided under Rule 4 of the Civil Servant Appeal Rules, 1977. Learned counsel in support of his contentions placed reliance on case titled *Vice Chancellor/Chairman Admission Board University of Health Science Lahore v. Breeha Zainab and another* (PLJ 2011 Lahore 811 (DB)), *Basher Ahmed v. Board of Intermediate and Secondary Education, Multan through Chairman and 3 others* (2013 PLC (C.S.) 752) and *Mst. Karim Bibi v. Hussain Bukhsh and another* (PLD 1984 SC 344).

5. The instant appeal has been filed under section 3 of the Law Reforms (Amendment) Act, 1972. By virtue of section 3 of the said Act and an appeal lies to a Bench of two or more Judges of a High Court from final order made by a single Judge of that Court in exercise of its original civil jurisdiction. The said section is subject to a proviso provided in subsection (2) which for the sake of brevity is reproduced below and is as follows:

“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 201 arises out of any proceedings in which the law applicable provided for at least one appeal to any court, tribunal or authority against the original order.”

6. The plain reading of abovementioned proviso makes it clear that no appeal lies in a case where the law under which the original order was passed provides an appeal, revision or review. The case law, mentioned above, cited by learned counsel for the respondent is pertinent and elucidates the scope of referred proviso to subsection (2) of section 3 *ibid*. The relevant portions of the judgments mentioned above are reproduced below and are as under:

PLD 1984 SC 344

“A plain reading of the proviso to subsection (2) of section 3 of the Law Reforms Ordinance, 1972 means that no appeal will be available or competent before a Bench of two or more Judges of a High Court from an order made by a Single Judge of that Court in a Constitutional petition, if such petition arises out of “any proceedings” in which the law applicable provided for at least one appeal against the original order. The reference is clearly to the proceedings taken under any statute which prescribes a hierarchy of officers or authorities for the carrying into effect the purposes of such statute including the enforcement of rights, if any, created thereunder. In such a case clearly the law envisages an original order against which the remedy of appeal was provided by the relevant statute.”

2013 PLC (C.S.) 752

“Although the impugned judgment passed by the learned Single Judge is based on sound reasoning and each and every aspect of the matter has been discussed and dealt with in detail but first of all the question of maintainability of the I.C.A. is to be determined. The proviso to section 3 of the Law Reforms Ordinance, 1972 provides that the appeal referred to in subsection (ii) shall not be available and 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. The order of removal from service against the petitioner was assailed in the writ petition and there is no denial of the fact that an appeal



was provided to the departmental authority against the same. The appellant admittedly availed the said remedy by filing an appeal. So this Intra Court Appeal against the judgment of the learned Single Judge is barred by the proviso of section 3 of Law Reforms Ordinance. So without dwelling upon the merits of the case this I.C.A. is hereby dismissed being non-maintainable."

PLJ 2011 Lahore 811 (DB)

"We are, therefore, convinced that remedy of revision was available in the matter against the order of refusal of admission to respondent No.1, which is to be treated as the original order for the purpose of section 3 (2) proviso one of Law Reforms Ordinance, 1972. Additionally a revision was entertained by the Chancellor of the University and was rejected by him vide order dated 24.10.2009 and this facts has been narrated in reply to paragraph No.3 of the parawise comments by respondents No.1 & 2 before the learned Single Judge in Writ Petition No.7848/2009, the extract of which has been reproduced above, therefore, the bar of proviso to section 3 subsection (2) of Law Reforms Ordinance, 1972 is fully attracted in the instant case and the instant I.C.A. is not competent for the above reason.

7. The original order in the instant case is the order impugned by the respondent in the writ petition i.e. the order whereby he was retired from service. The respondent, under the Act and Rules framed thereunder, had the remedy of appeal. Even if the respondent is treated as a civil servant the remedy of appeal was available under the Civil Servant Appeal Rules, 1977 and the order of retirement could be assailed under the same. Since the remedy of appeal was provided under the relevant applicable laws, therefore, proviso to subsection (2) of section 3 is attracted and the instant Intra Court Appeal is not maintainable.

8. In view of above, the present appeal is dismissed as not competent.

(ATHAR MINALLAH)
JUDGE

(AAMER FAROOQ)
JUDGE

M. Naveed

Appand for signing