

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

ICA No.218/2020

Faqeer Muhammad
Versus
Chief Election Commissioner, etc.

| S. No. of order/ proceedings | Date of order/ proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|------------------------------|----------------------------|-------------------------------------------------------------------------------|
| | 02-09-2020 | Mr Rashid Ali, Advocate for appellant. |

The instant appeal has been preferred by the appellant invoking the provisions of the Law Reforms Ordinance, 1972 (*hereinafter referred to as the 'Ordinance of 1972'*).

2. The learned counsel was asked, whether the appellant is amenable to the jurisdiction of the learned Federal Service Tribunal? He has answered in the affirmative. He has stated that the appellant would be left without remedy because of lapse of limitation provided under the relevant law. He has urged that the writ petition, which was filed by the appellant may be converted into a representation so that the grievance could be decided by the competent authority.

3. The learned counsel has been heard and record perused with his able assistance.

4. Admittedly, the appellant is amenable to the jurisdiction of the learned Federal Service Tribunal. This appeal has been filed under the Ordinance of 1972. The proviso to sub-section 2 of Section 3 of the Ordinance of 1972 is unambiguous and places a bar on the maintainability of an Intra Court Appeal, if the matter assailed, by invoking the jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, arises out of any 'proceedings' in which the law applicable provides for atleast one appeal to any court, tribunal or authority against the original order. In the instant case a right of appeal is provided under the relevant law. The law relating to maintainability of an Intra Court Appeal is settled and, therefore, the proviso will be attracted in such cases in which the law provides for a remedy of appeal, revision or review.

5. The august Supreme Court in the case of '*Karim Bibi and others v. Hussain Bukhsh and others*' [PLD 1984 SC 344] has held that 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 expression 'original order' has also been interpreted in the same judgment. Reliance is also placed on the cases of '*Muhammad Aslam Sukhera and others v. Collector Land Acquisition, Lahore, Improvement Trust, Lahore and others*' [PLD 2005 SC 45] and '*Muhammad Abdullah v. Deputy Settlement Commissioner, Center-I, Lahore*' [PLD 1985 SC 107].

6. In view of the above discussion, this appeal is not competent and accordingly **dismissed**. The appellant, however, will be at liberty to avail his remedies provided under the law.

(CHIEF JUSTICE)

(LUBNA SALEEM PERVEZ)
JUDGE

Luqman Khan/*