

Form No: HCJD/C.

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

ICA No.735 of 2012

Homoeopathic Doctor Aftab Hassan Minhas
Vs
National Counsel for Homoeopathy through
its Registrar/Secretary & three (3) others.

Appellant's by: M/s Sardar Abdul Majeed Khan &
Muhammad Farid Chaudhry, Advocates.
Respondent's by: Mr. Aamir Abdullah Abbasi, Advocate.
Date of Decision: 04.03.2015.

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Aamer Farooq, J.- This appeal is directed against order dated 12.11.2012 passed in Writ Petition No.3774/2012. The appellant instituted a Constitutional Petition under Article 199 of the Islamic Republic of Pakistan, 1973 whereby the appointment of respondent No.3 as Registrar respondent No.1 was challenged alongwith the issuance of 'charge sheet' to him by respondent No.2. The referred petition was dismissed in the following terms:

"The prayer made by the petitioner is indicative of the fact that through instant petition, petitioner in fact, tried to seek stoppage of inquiry proceedings commenced against the petitioner. In order to run the affairs of the council, office of Registrar cannot be kept vacant and if some regular employee for the post is not available then authority has the jurisdiction to give acting charge of the same to an employee competent to run the affairs. The petitioner has not approached the court with clean hands, therefore, he is not entitled to any equitable relief, therefore, his request cannot be acceded to and petition is dismissed."

2. Learned counsel for the appellant, inter alia, submitted that learned Single Judge in Chambers has not taken into consideration that the post of Registrar should have been assigned to a gazetted Officer who should be Officer of BPS-16 or above. It was further contended that the inquiry proceedings initiated against the appellant are against the provisions of 'National Council for Homoeopathy (Staff) Service Regulations, 1987' (the **Regulations**).

3. Learned counsel for respondent No.1 vehemently opposed the appeal and submitted that the same is not maintainable inasmuch as a right of appeal is provided to the appellant under Clause 33 of the **Regulations**.

4. The present appeal has been filed under section 3(2) of Law Reforms Ordinance, 1972. The proviso to the referred section bars the Intra Court Appeal where petition before the High Court, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 arises out of any proceedings in which law applicable provides a right of appeal, revision or review against the original order. In this regard judgement of the Hon'ble Supreme Court of Pakistan titled "Karim Bibi & others vs. Hussain Bukhsh & another" (*PLD 1984 SC 344*) is instructive as the Hon'ble Court interpreted and dilated the proviso to subsection 2 of section 3 and observed as follows:

"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 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."

5. In the present case the appellant in essence assailed the departmental proceedings initiated against him and inquiry with respect to the same is underway. He has a right of appeal under Clause 33 of the **Regulations** which is reproduced and is as follows:

"33. Appeal.—(1) A staff member on whom a penalty has been imposed under these regulations may file an appeal before the officer/authority specified against the officer/authority imposing the penalty as given below—"

**Officer/Authority imposing
the penalty.**

**Officer/Authority to whom
the appeal shall lie**

***Superintendent Secretary
President Council.***

***Secretary, President,
Council, Federal
Government.***

***(2) Every appeal shall be submitted within a period of 28
days of the communication of the order appealed against.***

6. In case the appellant is punished he can file an appeal under rule 33 ibid. Moreover, the constitutional petition, in the present case, impugns the departmental proceedings against the petitioner undertaken under the Regulations which provides a right of appeal, as aforementioned. Therefore, the instant appeal in light of proviso to section 3(2) of law Reforms Ordinance, 1972 is not maintainable.

7. In so far as appointment of respondent No.3 on the post of Registrar, respondent No.1 is concerned the same is prerogative of respondent No.1 which acts in consultation with respondent No.4.

8. In view of foregoing discussion this appeal is dismissed as not maintainable.

(ATHAR MINALLAH)
JUDGE

(AAMER FAROOQ)
JUDGE

*Blue slip
added.*

Approved for reporting.