

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No.246 of 2016
Dr. Basharat Hassan Bashir
Versus

Chairman, Alternative Energy Development Board and others

Date of Hearing:	11.12.2019 & 18.05.2020.
Appellant by:	Mr. Ghulam Nabi Niazi, Advocate.
Respondents by:	Mr. Saqlain Haider Awan, learned Assistant Attorney-General with Mr. Mehmood Khan Lakho, S.O. (Establishment Division). M/s Muhammad Faisal Khan and MNA Rehan, Advocate for A.E.D.B.

MIANGUL HASSAN AURANGZEB, J:- Through intra Court appeal No.246/2016, the appellant, Dr. Basharat Hassan Bashir ("Dr. Bashir"), impugns the judgment dated 28.04.2016 passed by the learned Judge-in-Chambers, dismissing writ petition No.933/2016 filed by him challenging the letter dated 09.03.2016 issued by the Alternative Energy Development Board ("A.E.D.B.") whereby his services were terminated with immediate effect.

2. Learned counsel for the appellant submitted that Dr. Bashir's services could not have been terminated on the basis of the law laid down by the Hon'ble Supreme Court in the judgment dated 13.01.2015 passed in criminal petition No.560/2014 since the said judgment was inapplicable to Dr. Bashir's case; that in the case before the Hon'ble Supreme Court, the regularization made by the Cabinet Sub-committee of the officers appointed in MP scales had been declared unlawful; that Dr. Bashir's services had not been regularized pursuant to a decision taken by the Cabinet Sub-committee, but by the Board of A.E.D.B., which was fully competent to do so in terms of Section 12 of the A.E.D.B. Act, 2010; that indeed it was not the mandate of the Cabinet Sub-committee to regularize the services of the officers appointed in MP scales; that even otherwise, the said judgment did not apply to Dr. Bashir since after 12.12.2007, he had been adjusted in A.E.S-10 scale and was no longer holding a position in MP scale; and that Dr. Bashir's appointment as a Consultant on contract

basis and the subsequent regularization of his services did not suffer from any legal infirmity.

3. On the other hand, learned counsel for A.E.D.B. raised an objection to the maintainability of this appeal on the ground that since A.E.D.B. Employees Service Regulations, 2013 ("the 2013 Regulations") provided a remedy of an appeal, the intra court appeal was barred under the proviso to Section 3(2) of the Law Reforms Ordinance, 1972. He further submitted that the termination of Dr. Bashir's services was strictly in accordance with the law laid down by the Hon'ble Supreme Court in Criminal Petition No.560/2014; and that there was no provision in the statutes governing A.E.D.B. or the Regulations made thereunder under which the services of an officer appointed in MP scale could be adjusted in the A.E.S. scale and subsequently the said officer could be made a regular employee of A.E.D.B.

4. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. Before delving into the merits of the case, we deem it appropriate to decide the objection raised by the learned counsel for A.E.D.B. to the maintainability of this appeal.

5. In exercise of the powers conferred by Section 19 of the A.E.D.B. Act, 2010, the A.E.D.B. on 30.04.2013 made the 2013 Regulations. Paragraph 16.1 in Chapter 16 of the said Regulations provides a remedy of an appeal as per Civil Servants (Appeal) Rules, 1977 and the instructions issued thereunder from time to time. In the impugned judgment dated 28.04.2016, the said Regulations have been held to be statutory in nature.

6. Section 3(2) of the Law Reforms Ordinance, 1972 provides that an appeal shall 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) Article 199 of the Constitution not being an order made under sub-paragraph (i) of the paragraph (b) of that clause. The proviso to Section 3(2) is reproduced herein below:-

"Provided that the appeal referred to in this sub-section 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.”

7. An intra Court appeal is competent only in a case in which the statutory remedy of appeal or revision or review is not available at the time of the passing of the original order in the proceedings. In the instant case, the 2013 Regulations did provide a remedy of an appeal to Dr. Bashir against the termination of his services.

8. In the cases of Karim Bibi etc. Vs. Hussain Bukhsh etc. (PLD 1984 SC 344), Muhammad Abdullah Vs. Deputy Settlement Commissioner, Centre-I, Lahore (PLD 1985 SC 107), and Nawazul Haq Chowhan Vs. The State (2003 SCMR 1597), it was held *inter alia* that if a remedy in the form of an appeal, review or revision was available under the law against the impugned proceedings and despite such fact the said remedy was not availed before the filing of a writ petition, the intra Court appeal would not be competent/maintainable against the order of the Single Judge of a High Court.

9. Learned counsel for the appellant contended that since the appellant had been appointed by A.E.D.B.'s Board and so was his employment terminated pursuant to the decision taken by A.E.D.B.'s Board, there was no authority higher than A.E.D.B.'s Board before which the appellant could have preferred a departmental appeal under the provisions of the Civil Servants (Appeal) Rules, 1977 which had been adopted through Regulation 16.1 of the 2013 Regulations. He further contended that since the appellant could not file an appeal under the Civil Servants (Appeal) Rules, 1977, the instant intra Court appeal was not hit by the proviso to Section 3(2) of the Law Reforms Ordinance, 1972. We do not find substance in this argument for the simple reason that against the termination of his employment, the appellant could have preferred a review application before the A.E.D.B.'s Board under the first proviso to Section 4(1) of the Civil Servants (Appeal) Rules, 1977. The first proviso to Section 3(2) of the Law Reforms Ordinance, 1972 bars an intra Court appeal not just against the orders against which

the law provides a right of appeal but also against which the law provides a right of filing a review application.

10. Section 4(1)(d) of the Civil Servants (Appeal) Rules, 1977 provides that a civil servant shall be entitled to appeal to the appellate authority from an order passed by an authority which terminates his employment or gives notice of such termination otherwise than (i) on his reaching the age of superannuation, or (ii) in accordance with the provisions of the Civil Servants Act, 1973. The first proviso to the said Section provides that a person appointed by the President shall have no right to appeal from an order passed by the President but he may apply for review of the order.

11. The test for determining as to whether an intra Court appeal against an order passed by the Single Bench of the High Court is maintainable, is not whether the appellant in the intra Court appeal could have filed an appeal, revision or review against the original order but whether the law out of which the proceedings had arisen had provided such remedies against the original order.

12. In the case of Muhammad Abdullah Vs. Deputy Settlement Commissioner (PLD 1995 SC 107), an intra Court appeal was held not to be maintainable even though the law out of which the proceedings had arisen and which provided a right of an appeal had been repealed when the intra Court appeal was filed. In the case of Mst. Karim Bibi Vs. Hussain Bakhsh (PLD 1984 SC 344), it was held as follows:-

"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 was subject to an appeal under the relevant law."

13. Since the 2013 Regulations read with the Civil Servants (Appeals) Rules, 1977 provided a remedy of an appeal/review to Dr. Bashir against the termination of his services, the instant

intra Court appeal is liable to be dismissed as not maintainable and is accordingly dismissed.

14. Even if it is assumed that the 2013 Regulations were not statutory in nature then the writ petition filed by Dr. Bashir against the termination of his services would not be maintainable. It is well settled that the principle of 'master and servant' was applicable to the employees whose services were not governed by any statutory rules. Employees of a statutory body, in the absence of any violation of the law or statutory rules, cannot press into service the Constitutional jurisdiction of the High Court in order to seek relief with respect to their employment. Reference in this regard may be made to the law laid down in the cases of Samiullah Narago Vs. Federation of Pakistan (2012 PLC (C.S.) 1205), Pakistan Telecommunication Company Limited Vs. Iqbal Nasir (PLD 2013 SC 132), and Pakistan International Airlines Corporation Vs. Tanveer-ur-Rehman (PLD 2010 SC 676).

15. It is pertinent to mention that on 01.07.2013, writ petition No.2819/2013 had been filed before this Court by one Muhammad Ali questioning the additional charge of C.E.O. of A.E.D.B. being given to Dr. Bashir. Subsequently on 28.11.2013, writ petition No.4394/2013 was filed before this Court by one Sulman Ishaque Malik seeking a writ of *quo warranto* to be issued to Dr. Bashir, who was then holding the post of Director General, A.E.D.B. The said writ petitions were allowed, vide judgment dated 23.06.2014, and Dr. Bashir's appointment/regularization was declared to be *"illegal, unlawful, without lawful authority, against the Constitutional mandate, prescribed procedure and applicable law."*

16. The said judgment was challenged by Dr. Bashir in intra Court appeals No.424/2014 and 425/2014 before this Court. It may also be mentioned that vide interim order dated 21.07.2014 passed by the Division Bench of this Court, the operation of the said judgment dated 23.06.2014 was suspended. The effect of the said order dated 21.07.2014 was that Dr. Bashir continued to work as Director General in A.E.D.B.

17. During the pendency of the said appeals and the subsistence of the said interim order, A.E.D.B., vide letter dated 09.03.2016, terminated Dr. Bashir's services with immediate effect. Dr. Bashir had assailed A.E.D.B.'s letter dated 09.03.2016 whereby his services were terminated before this Court in writ petition No.933/2016. Vide judgment dated 28.04.2016, the said petition was dismissed. The said judgment dated 28.04.2016 has been assailed by Dr. Bashir in the instant appeal.

18. Now, had the operation of the judgment dated 23.06.2014 not been suspended by this Court, Dr. Bashir would not have remained in A.E.D.B.'s service and the question of terminating his services vide letter dated 09.03.2016 would not have arisen. Since this Court has dismissed Dr. Bashir's appeals against the said judgment dated 23.06.2014, it is our view that the instant appeal has been rendered infructuous. This is an added reason why this appeal merits dismissal.

19. In view of the above, instant appeal is dismissed as not maintainable. We have refrained from discussing the merits of the case since we have found this appeal not to be maintainable.

(CHIEF JUSTICE)

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 10-06-2020

(CHIEF JUSTICE)

(JUDGE)