SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Gulzar Ahmed
Mr. Justice Qazi Faez Isa
Mr. Justice Sardar Tariq Masood

CIVIL APPEAL NO.1257 OF 2012

[On appeal against the judgment dated 27.09.2012 passed by the Islamabad High Court, Islamabad, in W.P.No.322 of 2012]

SME Bank Ltd through its President Islamabad & another ***...Appellant(s)***

VERSUS

Izhar ul Haq ***...Respondent(s)***

For the Appellant(s)	:	Mr. Tariq Mehmood, Sr. ASC Syed Riffaqat Hussain Shah, AOR
For the Respondent(s)	:	Mr. Abdul Rahim Bhatti, ASC Mr. M.S.Khattak, AOR
Date of Hearing	:	15.04.2019

JUDGMENT

GULZAR AHMED, J.— The Respondent was employed as an Executive Vice President (**EVP**) with the appellant-Bank. The appellant had issued Voluntary Separation Scheme (**VSS**) and it seems that the respondent had applied under it. At the same time, the respondent was facing disciplinary proceeding. In the disciplinary proceedings, he was found guilty of committing irregularities and gross negligence of the highest degree on all charges relating to TAAS Securities an

institution. The appellant vide Office Order dated 02.06.2003 imposed such penalty. This Office Order of penalty was challenged by the respondent by filing Writ Petition No.2702 of 2006 in the Lahore High Court, Rawalpindi Bench, with the following prayer:

> *a) Declare the impugned Order dated 02.06.2003 may kindly be set-aside by extending the benefits of the Judgments mentioned above;*
>
> *b) Direct the respondents to release the benefits of Voluntary Separation Scheme with 20% mark up and the petitioner may also be paid the salaries and allowances for the period from 17.01.2002 to 02.06.2003; and*
>
> *c) Direct the respondents to calculate the benefits of VSS on the basis of last pay drawn by the petitioner".*

Although the appellant seems to have contested the said writ petition but vide judgment dated 28.10.2011 the said writ petition was allowed by granting the following relief to the respondent:

> *"11. The ultimate inference which floats from the above discussion is that the petitioner is entitled for recovery of V.S.S. benefits. Resultantly, the instant writ petition is accepted and the respondents are directed to pay Voluntary Separation Scheme benefits to the petitioner."*

This judgment of the High Court was not challenged either by the appellant or the respondent. The respondent was paid benefit of VSS vide letter dated 05.01.2012, which payment was received by the respondent 'under protest' as stated by his counsel. The respondent then filed another Writ Petition No.322 of 2012 in the Islamabad High Court, Islamabad, containing the following prayer:

> *"i) Salaries and allowances for the period from 17.01.2002 to 02.06.2003;*
>
> *ii) VSS benefits on the basis of last pay drawn i.e. 02.06.2003 with 20% mark up".*

This writ petition was also contested by the appellant. After hearing learned counsel for the parties, learned Judge-in-Chambers of the Islamabad High Court passed the impugned judgment dated 27.09.2012, accepting the said writ petition and specifically directing the appellant to comply with the judgment dated 28.10.2011, in letter and spirit. Petition for leave to appeal

was filed by the appellant, in which leave was granted by this Court vide order dated 31.12.2012.

2. We have heard learned counsel for the parties and have also gone through record of the case.

3. Mr. Abdul Rahim Bhatti, learned ASC for the respondent, at the outset, has contended that the appeal before this Court is not maintainable as against the impugned judgment the appellant had a remedy of filing an Intra-Court Appeal (**ICA**) in the High Court. He contended that without availing such remedy, the present appeal is liable to be dismissed.

4. Mr. Tariq Mehmood, learned Senior ASC for the appellants, on the other hand, has opposed the submissions and contended that remedy of ICA was not available to the appellants for that under the RDFC Employees Service Regulations, 1989, by which penalty was imposed upon the respondent, there was remedy of appeal and review under Regulation No.10.7, which provides that *an employee shall have the right of appeal from or of making application for review of any order imposing on him any of the penalties* and the respondent claiming these Regulations to be statutory. Thus, the remedy of ICA will stand excluded altogether to the appellant per section 3 of the Law Reforms Ordinance, 1972 (**Ordinance of 1972**), and in this respect reliance was placed upon a judgment of five-member Bench of this Court in the case of *Mst. Karim Bibi & others* ***v.*** *Hussain Bakhsh & another* [PLD 1984 SC 344].

5. We would directly like to examine the said judgment of this Court cited at the Bar by the learned Senior ASC for the appellant and in this regard, reference is made to para 8 thereof. Relevant portion is as follows:

> *"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.*"

6. It is admitted fact that disciplinary proceedings were conducted against the respondent under the Regulations stated above, which ultimately resulted into imposition of penalty vide Office Order dated 02.06.2003, against which under the said Regulations, which are stated by the respondent to be statutory, the remedy of appeal and review is provided. We are of the view that where the proceedings from which the writ petition has arisen provided for either review, revision or appeal, in terms of proviso to section 3 of the Ordinance of 1972, remedy of ICA will not be available against the judgment passed by the learned Single Judge in the writ petition. Thus, the appeal before this Court is competent.

7. During the course of arguments, it was plainly conceded by the learned ASC for the respondent that Writ Petition No.322 of 2012 is a continuation of the proceeding under which penalty was imposed upon the respondent and that the respondent was claiming benefit by way of implementation of the judgment passed by the High Court in the earlier Writ Petition No.2702 of 2006. Learned ASC for the respondent was then confronted with the question as to whether the writ petition is maintainable for obtaining implementation of the judgment passed by the High Court in the earlier writ petition, he, in the first place, referred to the provision of Article 187(2) of the Constitution and contended that the High Court is competent to execute its own judgment under this provision. On reading of Article 187 of the Constitution, it is apparent that it gives powers to the Supreme Court to issue such directions, orders or decrees as may be necessary for doing

complete justice in any case or matter pending before it, including an order for the purpose of securing the attendance of any person or the discovery or production of any document, while as per clause (2) thereof such directions, order or decree shall be enforceable throughout Pakistan and shall, where it is to be executed in a Province, or a territory or an area not forming part of a Province but within the jurisdiction of the High Court of the Province, be executed as if it had been issued by the High Court of that Province. Thus, this provision of the Constitution does not offer any help to the respondent for it deals with the execution of directions, orders and decree of the Supreme Court by High Court. The learned ASC for the respondent then referred to the provision of sub-para (i) of paragraph (c) of clause (1) of Article 199 to argue that the judgment passed in Writ Petition No.2702 of 2006 could be enforced through this Article of the Constitution. We have asked the learned ASC to cite any precedent but no such precedent was cited by him before us. Thus, his second Writ Petition No.322 of 2012 was not maintainable before the Islamabad High Court.

8. What we understand is that pursuant to the penalty imposed upon the respondent, he filed Writ Petition No.2702 of 2006 in which the only relief granted to him, out of the prayers made by him, was that of VSS benefit be paid to him and no other prayer, contained in the said writ petition, was allowed by the High Court. The respondent neither sought review of the said judgment nor challenged the same before this Court rather the judgment itself was accepted by him and the payment made to him under such judgment was received by him 'under protest'. Receiving of benefit 'under protest' was of no consequence for that the respondent admits that such payment settled his dues of VSS but the remaining dues, as was prayed by him in Writ Petition No.2202 of 2006, were not granted to him. If that be the case, the respondent ought to have taken measures for granting him other prayers containing in the earlier writ petition either by seeking review or by filing proceeding before this Court, which he did not do. The VSS benefits having been paid to him, which were only relief allowed by the High Court vide its judgment dated

28.10.2011 and same having been accepted by the respondent, he cannot claim that full relief has not been granted to him by the appellant. Further, the principle of *res judicata* with all its force will apply to the case of the respondent for that his second writ petition against the appellant will not be maintainable for granting him the relief, which was not allowed to him by the High Court earlier for that the law assumes that such relief stood specifically denied to him by the High Court while passing judgment dated 28.10.2011. This being the position apparent on the record, after having heard learned counsel for the parties and going through the record, by short order we had allowed the appeal and set aside the impugned judgment dated 27.09.2012. These are the reasons of our short order of even date.

JUDGE

Bench-II **JUDGE**
ISLAMABAD
15.04.2019
APPROVED FOR REPORTING
Hashmi **JUDGE**

2012 SCMR 366 SUPREME-COURT
Side Appellant : GHULAM AKBAR LANG
Side Opponent : DEWAN ASHIQ HUSSAIN BUKHARI

2005 SCMR 699 SUPREME-COURT
Side Appellant : Messrs M.K.B. INDUSTRIES (PVT.) LTD. and others
Side Opponent : CHAIRMAN, AREA ELECTRICITY BOARD, WAPDA