

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

**MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE SYED MANSOOR ALI SHAH
MR. JUSTICE MUHAMMAD ALI MAZHAR**

**C.M. Appeal No. 47 of 2020 in CMA Nil of 2020 in C.R.P.
664 of 2018 in C.P. 130 of 2016**

(against the order of the Institution Officer dated 17.02.2020)

Khalid Mehmood

...Appellant(s)

Versus

Chaklala Cantonment Board through its ...Respondent(s)
CEO and others

For the Appellant(s) : Barrister Umer Aslam Khan, ASC
Ch. Akhtar Ali, AOR

For the Respondent(s) : Mr. Babar Ali, ASC

Date of Hearing : 21.09.2021

ORDER

UMAR ATA BANDIAL, J.- The appellant seeks a second review through this petition. Learned counsel has relied upon the judgment of this Court in Khalid Iqbal versus Mirza Khan (PLD 2015 SC 50) which has in turn referred to PLD 2013 SC 829 Regarding Pensionary Benefits of the Judges of Superior Courts.

2. We have read the judgment carefully but do not find that a second review petition is maintainable in the present case. Dismissed.

Sd/-

Judge

I have attached a separate note giving reasons for the non-maintainability of the second review petition.

Sd/-

Judge

Sd/-

Judge

Islamabad
21.09.2021

Naseer

Not approved for reporting

Syed Mansoor Ali Shah, J.- I agree with the conclusion arrived at by my learned brother, Justice Umar Ata Bandial, that the second review petition filed by the appellant is not maintainable, and that the present appeal filed against the order of the Institution Officer of this Court, returning the petition to the appellant, should be dismissed. As the learned counsel for the appellant has vehemently relied upon two judgments of this Court, *Khalid Iqbal v. Mirza Khan* (PLD 2015 SC 50) and *Judges' Pension case* (PLD 2013 SC 829), and one from the Indian jurisdiction, *Rupa Ashok v. Ashok Hurra* (AIR 2002 SC 1771), to argue that second review petition is maintainable. I, therefore, deem it appropriate to briefly address his argument and give my reasons for rejecting the same. Hence, this concurring note is being added.

2. The facts leading to the filing of the present appeal, briefly, are that the appellant filed a writ petition in the Lahore High Court against the respondents regarding an auction matter of the year 1997, which was allowed by a Single Bench of that High Court vide order dated 17.06.2013. The respondents' intra-court appeal before the Division Bench failed on 9 December 2015. They then filed a petition for leave to appeal in this Court, which was allowed by a three-member Bench of this Court vide its order dated 26.09.2018: the impugned judgments of the High Court were set aside and the writ petition of the appellant was dismissed on the ground of laches. The appellant filed a review petition against the said order of this Court, which was dismissed by this Court on 9 December 2019, holding that no ground for review had been made out. The appellant then filed an application under Article 187 of the Constitution of the Islamic Republic of Pakistan ("Constitution") read with Rule 2 of Order X and Rule 6 of Order XXXIII of the Supreme Court Rules 1980 ("Supreme Court Rules"), for passing appropriate orders in the interest of justice. The Institution Officer of this Court returned the said application of the appellant vide his order dated 17.02.2020 by determining that the application amounted to a second review petition which was not entertainable under Rule 9 of Order XXVI and Rule 2 of Order X of the Supreme Court Rules. The present appeal has been filed against this order of the Institution Officer.

3. The review jurisdiction is conferred on this Court by Article 188 of the Constitution, which states that the 'Supreme Court shall have power, subject to the provisions of any Act of *Majlis-e-Shoora* (Parliament) and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it'. The review jurisdiction conferred by

Article 188, as it is evident from the reading of that Article, is subject to the provisions of any Act of Parliament and any rules made by the Court. The Parliament has not so far passed any Act under this Article; however, the Supreme Court Rules made by this Court contain the rules that regulate its review jurisdiction. The rules of the Supreme Court Rules referred to by the Institution Officer of this Court while returning the second review petition of the appellant are reproduced here for ready reference:

Order XXVI, Rule 9

9. After the final disposal of the first application for review no subsequent application for review shall lie to the Court and consequently shall not be entertained by the Registry.

Order X, Rule 2

2. Subject to the provisions contained in Order XXVI, a judgment pronounced by the Court or by majority of the Court or by a dissenting Judge in open Court shall not afterwards be altered or added to, save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission.

In view of the above rules, the question of maintainability of, and the jurisdiction of this Court to entertain, a second review petition has been considered and decided by this Court in many cases. The legal position as to the non-maintainability of a second review petition is so well settled by the repeated pronouncements of this Court that I consider it unnecessary to delve into this question again and reference to some of these cases here, should suffice: See *Ahmad v. Abdul Aziz* 1991 SCMR 234; *Abdul Hameed Dogar v. Federation of Pakistan* 2010 SCMR 312; *Shabbar Raza v. Federation of Pakistan* 2018 SCMR 514 (7-MB); *Akhter Lalayka v. Mushtaq Sukhaira* 2018 SCMR 1218 (5-MB); *Moinuddin v. State* PLD 2019 SC 749 (7-MB). The declaration made by a seven-member larger Bench of this Court in the last mentioned case of *Moinuddin* is reproduced here to show what the law of the land on this matter is:

6..... There is, thus, no scope for maintainability of a second or subsequent review petition before this Court after the first review petition has been decided. It is sometimes argued that in such a situation, particularly in a case of extreme hardship, this Court may attend to the matter in exercise of its jurisdictions under Articles 184(3) or 187 of the Constitution or may resort to revisiting the earlier order or judgment in order to safeguard the interests of justice but such arguments have consistently been rejected by this Court in the past. In many previous cases this Court has consistently held that after exhausting the review jurisdiction of this Court a party to a case cannot invoke Articles 184(3) or 187(1) of the Constitution for reopening the same case.

4. Article 175(2) of the Constitution unequivocally declares that '[n]o court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law'. I am, therefore, of the considered view that entertaining a second review petition would amount

to vesting the Court with a jurisdiction not conferred on it by the Constitution or by or under any law in terms of Article 175(2) of the Constitution. It is reiterated that the courts in Pakistan enjoy jurisdiction which is conferred on them by the Constitution or by or under any law and do not possess any inherent jurisdiction on the basis of some principles of English common law, equity or good conscience. This is also a well-settled legal position as declared by this Court in the following, among other, cases:

Sindh Employees' Social Security v. Adamjee Cotton Mills PLD 1975 SC 32

It is, however, important to point out that the power to grant interim relief in this case is “ancillary or incidental” to the main appellate jurisdiction expressly conferred by the statute. This should not be confused with what is sometimes, claimed as the “inherent” jurisdiction of a Court, a claim which is no longer tenable in view of clause (2) Article 175 of the Constitution.

Brother Steel Mills v. Ilyas Miraj PLD 1996 SC 543 per Fazal Karim, J.

Clause (2) of that Article [175] provides that “no Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law”. For the purpose of these appeals, it is sufficient to say that the Supreme Court of Pakistan and the High Courts have been established by the Constitution, that the Supreme Court of Pakistan and the High Court have such jurisdiction as has been conferred upon them by the Constitution, that they have also such other jurisdiction as is or may be conferred upon them by or under any law and that other Courts may be established, and will have such jurisdiction as may be conferred upon them by or under law... Two propositions emerge clearly: First, that the jurisdiction of the Courts is never established by themselves, it is established by an authority external to them, either in the Constitution or in law... Secondly, it is for the Constitution and subject to the Constitution, for the law to determine the nature and extent of the jurisdiction and the forum upon which it will be conferred.

Hitachi Limited v. Rupali Polyester 1998 SCMR 1618

The principles of common law or equity and good conscience cannot confer jurisdiction on the Courts in Pakistan which has not been vested in them by law. In this regard reference may be made to clause (2) of Article 175 of the Constitution of Pakistan, which provides that no Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.

As there is no provision in the Indian Constitution similar to Article 175(2) of our Constitution, the *Rupa Ashok* case of the Indian jurisdiction, which held that the Indian Supreme Court has the inherent jurisdiction to act *ex debito justitiae* and can entertain in some rarest of the rare cases a second (curative) review petition, does not advance the argument of the learned counsel for the appellant in any manner. Any transplant of a rule from a foreign jurisdiction in ours can only be made after considering closely and thoroughly the difference in the constitutional texts and contexts. In view of the difference of provisions in the Constitutions of both countries, the reference to the said Indian case is misplaced.

5. So far as the reference to Article 187(1) of the Constitution by the appellant in his application (second review petition) is concerned, the same is also misconceived. The bare reading of Article 187(1) shows that its provisions are subject to and controlled by Article 175(2) of the Constitution. It only confers power on the Court 'to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it', and does not confer jurisdiction to take cognizance of any case or matter. The phrase 'in any case or matter pending before it' used in Article 187(1) is the key to construe the provisions thereof. It leaves little doubt to find that no independent proceedings can be initiated under this Article. The Court can invoke its power under Article 187(1) only in a case or matter that is competently filed before it under any Article of the Constitution or provision of some other law conferring jurisdiction as stated in Article 175(2) and is also pending before it. Article 187(1) of the Constitution is not applicable where the case or matter stands finally concluded and is no more pending before the Court. And this is also a well settled view of this Court: See *Zulfiqar Babu v. Govt. of Punjab* PLD 1997 SC 11; *Hitachi Limited v. Rupali Polyester* 1998 SCMR 1618; *Saeed Akhtar v. State* 2000 SCMR 383; *Khyber Tractors v. Pakistan* PLD 2005 SC 842. In the last mentioned case of *Khyber Tractors*, after going through the earlier cases this Court concluded thus:

The above reports do not lay down that an independent proceedings can be initiated under Article 187 of the Constitution but the ratio of the above reports seems to be that once this Court is seized of a lis competently under the relevant law, its power to grant appropriate relief is not controlled by the technicalities of the pleadings or otherwise as clause (1) of Article 187 lays down that subject to clause (2) of Article 175 of the Constitution, the Supreme Court shall have power 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 of production of any document. We may point out that the key words employed in the above clause are "in any case or matter pending before it." The above words clearly indicate that the relief referred to in the aforesaid clause can be granted in the case or matter pending before the Supreme Court. It may further be observed that the word "pending" means competently brought before this Court. The provision of rule 6 of Order XXXIII of the rules is in line with above clause (1) of Article 187 of the Constitution as it provides that nothing in these rules shall be deemed to limit or otherwise effect the inherent power of the Court to make such order as may be necessary for the ends of justice or to prevent abuse of process of the Court. The above rule can be pressed into service only in a matter which is competently filed before this Court but it does not give an independent right to initiate proceedings of the nature in question.

6. In *Khalid Iqbal* case, referred to by the learned counsel, the second review petition was dismissed by this Court holding the same to be not maintainable; the said case, therefore, does not support but rather negates the argument of the learned counsel. The learned counsel relied

upon certain observations made by Justice Mian Saqib Nisar as to the reviewing of its *per incuriam* judgment by this Court, in his concurring opinion recorded in the *Judges' Pension case*, which was also referred to in the *Khalid Iqbal case*. Those observations were made by Justice Mian Saqib Nisar by referring, among some cases of foreign jurisdiction, to the observations of Chief Justice Cornelius made in *Nawabzada Amir Khan v. Controller of Estate Duty* (PLD 1962 SC 335). Thus, the genealogy of the observations made in both the cases referred to by the learned counsel goes back to the observations made by Chief Justice Cornelius in the *Nawabzada Amir Khan case*. The said case was of a first review petition, and the observations made therein by the learned Chief Justice and other Judges relate to the first review petition, not to the second. So was the *Judges' pension case*, and the observations made by Justice Mian Saqib Nisar in that case were also about the first review proceedings initiated by the Court *suo motu* on a note of the Registrar of this Court.

7. It is true that the Supreme Court Rules bar entertaining the second review petition but are silent on the point whether this Court can exercise *suo motu* review jurisdiction to entertain a second review petition under Article 188 of the Constitution. In my opinion, it cannot do so for the reason that the prohibition on entertaining a second review petition is meant to put an end to litigation and ensuring finality of the judgments and orders of the apex court of the land, in the public interest. If this is the substance and purpose of the Supreme Court Rules, the prohibition operates both on the parties in moving the second review petition and on the Court as well, in exercising *suo motu* review jurisdiction the second time. If we assume that there is no prohibition on the *suo motu* exercise of its review jurisdiction the second time by the Court regarding a judgment or order, there will be no end to litigation nor will there be any finality of the judgment or orders of the Court as this *suo motu* review jurisdiction can then be exercisable for unlimited times and not only for the second time.

8. More importantly, review jurisdiction conferred on the Court by Article 188 of the Constitution, is with regard to 'any judgment pronounced or any order made by the Court' under the preceding Articles of the Constitution, i.e., Articles 184 in its original jurisdiction or under Article 185 in its appellate jurisdiction. Article 188 is not concerned with any judgment or order made in review jurisdiction by the Court under the same Article. And unless the judgment or order passed on the first review

petition or in the first *suo motu* review proceedings is recalled, the judgment or order passed in the original or appellate jurisdiction cannot be reviewed. If this is not the meaning and scope of the words ‘any judgment’ or ‘any order’ used in Article 188 of the Constitution but are taken to include the judgment or order passed in the review jurisdiction also, then any judgment or order passed in the second, third or fourth *suo motu* review proceedings will also be reviewable in the third, fourth or fifth *suo motu* review proceedings. Such an interpretation of the words ‘any judgment’ or ‘any order’ in Article 188 of the Constitution, if adopted, would be against the legislative intent and the public interest that lies in putting an end to litigation and ensuring finality of the judgments and orders of the apex court of the country. Article 188 of the Constitution, thus, envisages only one-time exercise of the review jurisdiction, whether made on a review petition or *suo motu*, by the Court in respect of any of its judgments or orders passed in its original or appellate jurisdiction.

9. Nonetheless, it may be pertinent to underline here that revisiting, and overruling or modifying if found necessary, a decision on a question of law or enunciation of a principle of law, that is binding on all other courts in the country as per Article 189 of the Constitution, in a case other than that in which the said decision or enunciation was made, must not be confused with reviewing that very judgment or order in which the said decision or enunciation was made. There is no limit, under the Constitution or any law, as to how many times a question of law once decided or a principle of law enunciated in one case can be revisited, if found necessary to do so, in some other case by a larger Bench or the Full Court Bench of this Court, as an exception to the doctrine of *stare decisis* for the correction or development of the law declared by this Court. The following observations of a seven-member larger Bench of this Court made in *Shabbar Raza* may advantageously be quoted on this point:

[A] judgment of this Court can be considered to be *per incuriam* but it is for the Judges **to revisit any such judgment**, if and when pointed out by any person **during the course of hearing of any other case**. Such a finding would be premised on the Court finding the same judgment to be against any provision of the Constitution or the law, or the principle(s) already settled by a larger Bench of the Court. It is not the right of a person, who would have no *locus standi* under Article 184(3) of the Constitution, to file such a petition, particularly in the situation **where the review jurisdiction has been invoked and the same (review) has been dismissed**; thus, **such judgment (under review) can never be challenged by virtue of filing independent proceedings under Article 184(3) of the Constitution**. This would be an abuse of the process of law and is absolutely impermissible.

(Emphasis added)

10. For all that has been discussed above, the argument of the learned counsel for the appellant regarding the maintainability of a second review petition is found meritless and is therefore rejected. The second review petition, whatever name is given to it including the “curative review”, is not maintainable under Article 188 of the Constitution read with the Supreme Court Rules, and the Institution Officer of this Court has rightly returned the second review petition filed by the appellant, being not entertainable. The present appeal is meritless and is, therefore, dismissed

Judge

Islamabad,
21 September 2021.
Approved for reporting
Sadaqat

04.08.2023

Muhammad Ali Mazhar, J: On 21.9.2021, C.M. Appeal No.47/2020 filed in C.M.A. Nil/2020 in C.R.P. No.664/2018 in C.P. No.130/2016 was dismissed by this Court on the ground that a Second Review Petition is not maintainable. Recently I have authored a judgment in the case of Commissioner Inland Revenue Z-III, Corporate Regional Tax Office, Tax House, Karachi & another v. MSC Switzerland & Geneva (2023 SCMR 1011), wherein the review jurisdiction was discussed in detail keeping in mind Article 188 of the Constitution, Order XXVI of the Supreme Court Rules, 1980 and Order XLVII, Rule 1, CPC. Even with reference to the First Review Petition, it was held in the above judgment that clemency by dint of review is accorded to rectify an irreversible injustice, if any, done by a Court such as through misconstruction of law, misreading of the evidence or non-consideration of pleas raised before a Court that would amount to an error floating on the surface of the record; however, where the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not be competent. Review by its nature is neither commensurate to a right of appeal or opportunity of rehearing merely on the ground that one party or the other felt dissatisfied with the decision of the Court, nor can a judgment or order be reviewed merely because a different view could have been taken. So far as the Second Review Petition is concerned, it is clearly provided under sub-rule 9, Rule 9 of Order XXVI of the Supreme Court Rules, 1980 that, after the final disposal of the first application for review, no subsequent application for review shall lie to the Court and consequently it shall not be entertained by the Registry.

2. My learned brother Justice Mansoor Ali Shah, in order to elucidate the maintainability and scope of a Second Review Petition, contributed a separate note for amplification. I concur with the view of my learned brother that a “Second Review Petition” is not maintainable under the Rules, and for this reason the Second Review Petition was rightly dismissed vide order dated 21.9.2021.

Judge