

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Yahya Afridi
Mrs. Justice Ayesha A. Malik
Mr. Justice Syed Hasan Azhar Rizvi

CIVIL PETITION NO.835 OF 2021

[Against judgment dated 18.01.2021 passed by the Islamabad High Court, Islamabad in ICA No.1100 of 2013]

International Islamic University, Islamabad
through its Rector and another ...Petitioner(s)

Versus

Syed Naveed Altaf and others ...Respondent(s)

For the Petitioner(s) : Mr. Rehan-ud-Din Khan, ASC

For the Respondent(s) : Mr. Muhammad Munir Paracha,
ASC

Date of Hearing : 16.11.2023

JUDGMENT

AYESHA A. MALIK, J:- This Civil Petition is directed against judgment dated 18.01.2021 passed by the Islamabad High Court, Islamabad (**High Court**) whereby Intra Court Appeal (**ICA**) filed by the Petitioners was dismissed.

2. The basic question is with reference to the maintainability of the intra court appeal filed by the Petitioners which was dismissed on the ground that Section 38 of the International Islamic University Ordinance, 1985 (**Ordinance of 1985**) provides for a right of appeal and review against the decision of the Board of Governors. Consequently, proviso to Section 3(2) of the Law Reforms Ordinance, 1972 (**Law Reforms Ordinance**) was applicable.

3. Counsel for the Petitioners argued that Section 38 of the Ordinance of 1985 is not applicable to the Petitioners as they do not have any right of appeal under the said Ordinance. The right of appeal vests with the employees of the Petitioner-University and not the Petitioner itself. Consequently, Section 3(2) of the Law Reforms Ordinance was not applicable and the ICA was maintainable. He has placed reliance on order dated 01.03.2018 passed by this Court in Civil Petition No.590 of

2017 wherein the petition was allowed holding therein that since the remedy of appeal was not available to the employer and available only to the employees, hence, the ICA was maintainable as there was no remedy of appeal available to the petitioner. Consequently, Section 3(2) of the Law Reforms Ordinance was not applicable with reference to the maintainability of the petition.

4. Mr. Muhammad Munir Paracha, counsel for the Respondents submits that the Petitioners have relied upon an order of this Court dated 01.03.2018 which is by a three member bench, however, a larger bench of this Court has laid down a test to determine the applicability of the proviso to Section 3(2) of the Law Reforms Ordinance. In the case of Mst. Karim Bibi and others v. Hussain Bakhsh and another (PLD 1984 SC 344) this Court has held that where there is at least one appeal against the original order, in the proceedings, then no appeal would be competent from the order of a single judge in constitutional jurisdiction. Meaning thereby that the test is whether the original order, passed in the proceedings was subject to an appeal under the relevant law, irrespective of the fact as to whether the remedy of appeal was available or not to a party. He states that this judgment is by a larger bench than the one cited and the test so applied in the said judgment makes it clear that it is not relevant to exercising the right of appeal rather whether there is an appeal under the statute against the original order.

5. We have examined the *Karim Bibi* case (*supra*) in great detail and find that it is applicable to the instant case. The relevant law in this case is Section 38 of the Ordinance of 1985, which provides for the remedy of appeal or review before the Board of Governors against any order punishing a teacher or other employees of the university. The original order in this case was order dated 02.02.2012 by the Board of Governors discontinuing incentives which order was first challenged by the Respondents by way of a departmental appeal and then subsequently in a writ petition. The Respondents admittedly availed the remedy of appeal provided against the original order by the Board of Governors in terms of Section 38 of the Ordinance of 1985. Consequently, the proviso to Section 3(2) of the Law Reforms Ordinance creates a bar on the remedy of appeal, in the following manner:

".... 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."

The above provision is applicable in the present case as there is a remedy of appeal available under the Ordinance of 1985, hence the impugned judgment was correct in dismissing the ICA. A similar view was rendered by another four member bench of this Court in the case Muhammad Abdullah v. Deputy Settlement Commissioner, Centre-I, Lahore (PLD 1985 SC 107) wherein this Court again reiterated the principle laid down in the *Karim Bibi* case (*supra*) and held that ICA was not competent because the law provided for an appeal against the original order. As per the dicta of this Court, the essential requirement to invoke the proviso to Section 3(2) of the Law Reforms Ordinance is to see whether the remedy of at least one appeal, review or revision is available under the law against the original order, in the proceedings in which the law is applicable to decide the ICA on merit. The law must prescribe for the remedy of appeal, review or revision, and if so Section 3(2) of the Law Reforms Ordinance will be applicable, notwithstanding whether that remedy is available to the person filing the ICA.

6. Under the circumstances, this petition being devoid of merit is dismissed and leave refused.

JUDGE

JUDGE

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