

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Muhammad Ali Mazhar and Athar Minallah, JJ**NATIONAL BANK OF PAKISTAN through President and another---Petitioners****Versus****MUHAMMAD ADEEL and others---Respondents**

C.P.L.A. No. 1800-L of 2018 and C.P.L.A. No. 1364 of 2023, decided on 13th March, 2024.

(Against the judgment of Lahore High Court, Lahore dated 06.06.2018, passed in I. C.A. No. 179944 of 2018 and order dated 06.02.2023 passed in I.C.A. No. 17830 of 2021).

(a) Law Reforms Ordinance (XII of 1972)---

---S. 3(2), proviso---Intra Court Appeal (ICA)---Maintainability---Test to determine whether remedy of ICA is available---Main test to determine whether an ICA is available under the proviso to Section 3(2) of the Law Reforms Ordinance, 1972 ('the Ordinance') is to see whether the proceedings, in which the original order has been passed, provide for an appeal, revision or review (collectively referred to as "appeal," for convenience) to any Court, Tribunal or authority against the original order---Applying this test what needs to be seen and verified is whether the proceedings provided for an appeal against the original order and not whether parties to the proceedings enjoyed the right to appeal against the original order---Proviso under Section 3(2) of the Ordinance is proceedings specific and not parties specific---So it matters less if one of the parties to the proceedings is not entitled to right of appeal against the original order passed in the said proceedings.

Karim Bibi v. Hussain Bakhsh PLD 1984 SC 344 and Muhammad Abdullah v. Deputy Settlement Commissioner, Centre-I, Lahore PLD 1985 SC 107 ref.

(b) National Bank of Pakistan (Staff) Service Rules, 1973---

---R. 40---Law Reforms Ordinance (XII of 1972), S. 3(2), proviso---Intra Court Appeal (ICA) filed by the bank---Maintainability---In the instant case, the proceedings under the National Bank of Pakistan (Staff) Service Rules, 1973, provide for an appeal under Rule 40 against the original order---This is sufficient to disentitle the parties to maintain an intra-court appeal, irrespective of the fact that one or more of the parties to the proceedings did not have a right of appeal against original order---Therefore, ICA is not maintainable in the present case---Petition was dismissed and leave was declined.

National Electric Power Regulatory Authority v. Faisalabad Electric Supply Company Ltd. PLD 2015 Lah. 661 disapproved.

Umer Abdullah, Advocate Supreme Court (in C.P. 1800-L of 2018) and Junaid Jabbar Khan, Advocate Supreme Court (in C.P. No. 1364 of 2023) for Petitioners.

Umer Abdullah, Advocate Supreme Court (in C.P. No. 1364 of 2023) and Junaid Jabbar Khan, Advocate Supreme Court (in C.P. No. 1800-L of 2018) for Respondents.

Date of hearing: 13th March, 2024.

ORDER

SYED MANSOOR ALI SHAH, J.---C.P.L.A. No. 1800-L of 2018: Brief facts of the case are that the respondent being an employee of the petitioner bank was promoted to the post of Officer Grade-I w.e.f. 01.01.2014. Aggrieved of the said order, as the petitioner sought promotion w.e.f. 03.03.2011, he filed an appeal under Rule 40 of the National Bank of Pakistan (Staff) Service Rules, 1973 ("Rules"). The said appeal was dismissed vide order dated 12.08.2016 against which the respondent preferred a writ petition before the High Court, which was allowed vide order dated 22.02.2018. Against the said order the petitioner-bank filed an intra-court appeal ("ICA"), which was dismissed on the ground of maintainability, being hit by the proviso to Section 3(2) of the Law Reforms Ordinance, 1972 ("Ordinance") through the impugned judgment dated 6 June 2018. Hence, the instant petition.

2. Learned counsel for the petitioner-bank submits that the intra-court appeal was maintainable before the High Court because under Rule 40 only an employee can file an appeal but no such remedy is available to the petitioner-bank, therefore, proviso to Section 3(2) of the Ordinance is not attracted in the present case and the petitioner-bank can file an ICA before the High Court. In support of this contention learned counsel placed

reliance on *National Electric Power Regulatory Authority v. Faisalabad Electric Supply Company Ltd.* (PLD 2015 Lahore 661), *Secretary to the Government of Punjab, Revenue Department and others v. Sajjad Ahmad and another* (2012 SCMR 114), *Syed Arif Raza Rizvi v. Messrs Pakistan International Airlines through Chairman/M.D. Karachi* (PLD 2001 SC 182) and *Federal Board of Revenue through Chairman, Islamabad and others v. Abdul Ghani and another* (2021 SCMR 1154).

3. Learned counsel for the respondent on the other hand submits that proviso to Section 3(2) of the Ordinance does not create any distinction as to the availability of appeal, review or revision to any of the parties but simply provides that if the proceedings in which the original order has been passed provides for an appeal, revision or review, no ICA is provided before the High Court. In support of this contention learned counsel placed reliance on *JS Bank Limited v. Province of Punjab* (2021 SCMR 1617) and a recent unreported judgment of this Court dated 16.11.2023 passed in Civil Petition No.835 of 2021 titled (2024 SCMR 472) "*International Islamic University, Islamabad through its Rector and another v. Syed Naveed Altaf and others*". He finally contends that the ICA filed by the petitioner-bank before the High Court was not maintainable.

4. We have heard the learned counsel for the parties and have gone through the case law presented by them. Section 3 of the Ordinance provides as follows:

3. Appeal to High Court in certain cases.---(1) An appeal shall lie to a Bench of two or more Judges of a High Court from a decree passed or final order made by a single Judge of that Court in the exercise of its original civil jurisdiction.

(2) An appeal shall also 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) of Article 199 of the Constitution of the Islamic Republic of Pakistan] not being an order made under sub-paragraph (i) of paragraph (b) of that clause:---

Provided that the appeal referred to in this subsection 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. (emphasis supplied)

The main test to determine whether an ICA is available under the proviso to Section 3(2) of the Ordinance is to see whether the proceedings, in which the original order has been passed, provide for an appeal, revision or review (collectively referred to as "appeal," for convenience) to any Court, Tribunal or authority against the original order. Applying this test what needs to be seen and verified is whether the proceedings provided for an appeal against the original order and not whether parties to the proceedings enjoyed the right to appeal against the original order. The proviso under Section 3(2) of the Ordinance is proceedings specific and not parties specific. So it matters less if one of the parties to the proceedings is not entitled to right of appeal against the original order passed in the said proceedings. See¹ *Karim Bibi v. Hussain Bakhsh* (PLD 1984 SC 344) and *Muhammad Abdullah v. Deputy Settlement Commissioner, Centre-I, Lahore* (PLD 1985 SC 107).

5. In the instant case, the proceedings under the National Bank of Pakistan (Staff) Service Rules, 1973, provide for an appeal under Rule 40 against the original order. This is sufficient to disentitle the parties to maintain an intra-court appeal, irrespective of the fact that one or more of the parties to the proceedings did not have a right of appeal against original order. Therefore, ICA is not maintainable in the present case. The case law relied upon by the learned counsel for the petitioner-bank is not relevant to the issue, except the High Court judgment passed in *National Electric Power Regulatory Authority v. Faisalabad Electric Supply Company Ltd.* (PLD 2015 Lahore 661),² which does not correctly interpret the proviso to Section 3(2) of the Ordinance and is therefore disapproved.

6. In view of the above, leave is declined, and this petition is dismissed.

C.P.L.A.1364/2023:

7. As the CPLA No.1800-L/2018 filed by the respondent-bank has been dismissed vide order of even date, the petitioner can approach the respondent-bank for the redressal of his grievance. The respondent-bank is directed to decide the same through a speaking order preferably within a period of two months from the receipt of this Order. This petition is disposed of in the above terms.

MWA/N-4/SC

Order accordingly.

¹ Four Member Benches.

² of which one of us (Syed Mansoor Ali Shah, J.) was a member.