

THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

IN CHAMBERS

Justice Syed Hasan Azhar Rizvi

Civil Misc. Appeal No. 4/2026

*(against the order dated 14.02.2026,
passed by the Registrar of this Court)*

Razia Aslam

.....Appellant(s)

Versus

*The Registrar, Federal Constitutional Court of
Pakistan.*

.....Respondent(s)

For the Appellant(s) : In-person

For the Respondent(s) : N.R.

Date of Hearing : 05.05.2026

ORDER

Syed Hasan Azhar Rizvi, J.— Through the present appeal under Order V, Rule 3 of the Supreme Court Rules, 2025 (**‘Rules’**), as formally adopted by this Court, the appellant has challenged the objection order (**‘impugned order’**) and return notice (**‘impugned notice’**) issued by the Registrar of this Court, both dated 14.02.2026, whereby the appeal filed by the appellant under Article 175E(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (**‘Constitution’**) has been returned as being not *entertainable* on the following grounds:

- a. *That the petitioner has not pointed out as to what questions of public importance in the instant case are involved with reference to enforcement of any of the Fundamental Rights guaranteed under the Constitution, so as to directly invoke jurisdiction of this under Article 175E(3) of the Constitution.*
- b. *That the petitioner is invoking the extraordinary jurisdiction of this Court under Article 175E(3) of the Constitution for the redressal of an individual grievance.*
- c. *That ingredients for invoking jurisdiction of this Court under Article 175E(3) of the Constitution have not been satisfied.*
- d. *That Notice issued to the respondents is not properly drawn as it is not mentioned therein that for what purpose this Constitution Petition is being filed before this Court.*
- e. *That instead of availing remedy available under the law the petitioner is directly invoking the jurisdiction of Court.’*

2. I have heard the learned counsel for the appellant and have examined the record.

3. The Registrar, through the impugned order, has concluded that the appeal filed by the appellant is not entertainable under Article 175E(3) of the Constitution (erstwhile Article 184(3)), *inter alia*, as the ingredients for invoking such an extraordinary jurisdiction of this Court have not been satisfied, whereas the appellant asserts that the same is maintainable under the said provision. The question thus arises for determination is whether the Registrar is vested with the authority to reach such a conclusion and, on that basis, return the appeal to the appellant. To resolve this question, it is necessary to examine the nature of the office of the Registrar, as well as the scope of his authority and powers under the Rules. A careful perusal of the Rules shows that the Registrar functions as the executive head¹ of the office and is entrusted with certain powers that are mostly administrative and ministerial in nature and some are procedural to regulate the filing and processing of the cases. The said powers are mentioned in different Orders of the Rules.² However, these powers are confined to ensuring compliance with procedural requirements, such as scrutiny of form, limitation, and other codified defects, and do not extend to adjudicating substantive or justiciable issues. The determination of maintainability, particularly where it involves interpretation of constitutional provisions, is a judicial function requiring application of the legal mind and adjudication upon rival contentions. Such a function lies exclusively within the domain of the Court and cannot be assumed by the Registrar in the exercise of administrative authority. To hold otherwise would amount to conferring judicial powers upon an administrative functionary, which is neither contemplated by the Rules nor consistent with the constitutional scheme of separation of powers. A limited exception is, however, provided under Rule 1 of Order V of the Rules, whereby the Registrar may exercise certain

¹ Rule 1 of Order III of the Supreme Court Rules

² The Registrar has been conferred: (i) the power under Rule 10(a) of Order III 'to require any plaint, petition of appeal, petition for leave to appeal or other matters' presented to the Court, to be amended in accordance with the practice and procedure of the Court, and (ii) the power under Rule 7 of Order VII to 'decline to receive any document' which is presented otherwise than in accordance with the Rules; Power to register petitions, appeals, suits, and other matters under Rule 1(6) of Order V of the Rules; the power to refuse to receive a petition on the grounds that it has not been filed in accordance with the Rules, or contains scandalous matter under Explanation II or Rule 1(6) of Order V read with Rule 5 of Order XVIII, etc.

powers of the Court in relation to specified applications in pending matters. Even so, such powers are procedural in nature and, *prima facie*, do not encroach upon the judicial authority of the Court to decide substantive justiciable issues arising in petitions or appeals.³

4. The powers of the Registrar (including the Registrar of a High Court having almost identical powers) remained under consideration before the Supreme Court of Pakistan in different cases, wherein important observations were made regarding the nature and extent of such powers. Since this Court has adopted these Rules *mutatis mutandis*, those observations are relevant and merit consideration, so that any departure therefrom, *if necessary*, may be undertaken only after due deliberation. The observations of the Supreme Court in some of those important cases (from newer to older) are as follows:

- I. In *Qausain Faisal v. Federation of Pakistan through Secretary, Ministry of Interior and others* (PLD 2022 SC 675), while hearing a chamber appeal, the Supreme Court observed as under:

‘2.....The justiciability of the legal and factual questions raised in the petitions is a matter for the Court to deal with and decide upon. **Registrar enjoying administrative powers under the Rules cannot assume the core adjudicatory role of the Court under the Constitution of the Islamic Republic of Pakistan, 1973. There is no provision in the Rules that empowers the Registrar to touch upon the maintainability of a petition, other than ensuring its proper form and presentation as per the practice and procedure of the Court provided in the Rules.** The maintainability and the merits of a petition are justiciable issues, and fall within the domain of the Court.’

Emphasis is added.

- II. In *Farman Ali v. Muhammad Ishaq and others* (PLD 2013 SC 392), the Supreme Court, while examining the powers of the Registrar of a High Court, who exercises powers substantially similar to those of the Registrar of this Court, observed as follows:

³ As observed by *Justice Syed Mansoor Ali Shah*, Judge Supreme Court of Pakistan (as he then was) while hearing a miscellaneous appeal in *Muhammad Ahsan Abid v. Makhdoom Khusru Bakhtiar and others* (PLD 2022 SC 712).

*‘5.....It is, thus, clearly mandated, that it is for the Court to decide as to what should be done with such a deficient petition, because **the ministerial and administrative staff of the High Court cannot be empowered and allowed to decide about the fate of the revision petition (even deficient), which in fact is a compliant against the Court, subordinate to the High Court, to that Court, and not subordinate to DR; this is not permissible in the exercise of DR's ministerial/administrative function at all. In such an event, it is for the Court alone to take a decision as to what should be the fate of such a petition....’***

Emphasis is added.

III. In *All Pakistan Newspapers Society and others v. Federation of Pakistan and others* (PLD 2004 SC 600), the Supreme Court further held that, let alone a Registrar, even a Single Judge, while disposing of an appeal under the Rules, cannot decide the question of maintainability of a petition. The relevant observation of the Court is as follows:

*‘9.....It is to be seen that under the scheme of the Rules 1980, there are two types of provisions, one which deals in respect of filing of ordinary petitions for leave to appeals, etc., and secondly there are some of the provisions which are meant for dealing of special types of cases like, application for enforcement of fundamental rights under Article 184(3) of the Constitution, Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto, etc. Order XXV of the Rules, 1980. Rule 7 of Order XXV provides that such applications shall be heard by a Bench consisting of not less than two Hon'ble Judges of the Court, therefore, with all humility at our command, **we are of the considered opinion that the learned Single Judge while disposing of appeal filed before him, either under Order V, Rules 3 or under Order XVII, Rule 5 of the Rules, 1980, cannot decide the question of maintainability of a petition. Thus with reference to these rules in the instant case, expression 'entertain' would be defined in its ordinary dictionary meanings i.e. 'to receive'. This definition seems to be more appropriate because the learned Single Judge in Chamber has directed the office 'to entertain the Constitution petition, register it and fix before the Bench.'***

Emphasis is added.

5. Considering the above legal position, it is observed that the action of the Registrar in declaring the appeal as not *entertainable* and returning the same on that basis travels beyond the scope of the authority conferred upon him under the Rules. The Explanation II under Rule 1(6) of Order V read with Rule 5 of Order XVIII of the Rules are the only provisions that authorize the Registrar to refuse to receive a

petition, and that too on limited grounds, *namely*, where the petition has not been filed in accordance with the Rules or is scandalous in nature. The concept of ‘scandalous’ under these Rule is to be understood within the overall constitutional framework of the Rules and the administrative scheme governing the functioning of this Court. A ‘scandalous’ petition, within the meaning of this provision, is confined to defects in form and presentation and does not extend to the merits or substance of the case.⁴ Thus, a petition that is deficient in material particulars, or which fails to invoke any provision of the Constitution, law, or the Rules under which it is purportedly filed, may be treated as scandalous for the limited purpose of scrutiny by the Registrar. In such cases, the Registrar may refuse to receive the petition unless the defects in form and presentation are rectified. This Rule does not vest in the Registrar any judicial power to adjudicate upon the justiciable issue of the maintainability of a petition or appeal on the ground that it is frivolous. The determination of such a question necessarily involves judicial consideration and, therefore, lies exclusively within the domain of the Court. At the same time, the Court can discourage the filing of outright non-maintainable, frivolous, and vexatious petitions or appeals by imposing costs on the unscrupulous petitioners or appellants under Rule 3, Part A of Order XXX of the Rules.

6. As far as objection (e), regarding directly approaching this Court in its original jurisdiction without availing the remedy available under the law, is concerned, it is noted that, after the five-member judgment of the Supreme Court in *Gul Taiz Khan Marwat*,⁵ it is now settled that no writ petition lies against an administrative order of a High Court. Consequently, where the impugned action emanates from the administrative side of a High Court, the ordinary constitutional remedy under writ jurisdiction stands excluded. In such circumstances, the availability of an alternative remedy must be real, efficacious, and legally permissible. Where the law itself bars or does not recognize a particular remedy, such as a writ against an administrative order of a High Court,

⁴ Reference here may be made to *Fazal Muhammad v. State* (PLD 1987 SC 273) and *Muhammad Ahsan Abid v. Makhdoom Khusru Bakhtiar and others* (PLD 2022 SC 712).

⁵ *Gul Taiz Khan Marwat v. the Registrar, Peshawar High Court, Peshawar and others* (PLD 2021 SC 391).

the objection regarding non-availing of such remedy loses its force. A party cannot be compelled to pursue a remedy that is either unavailable in law or rendered ineffective by binding precedent. In the present case, since the impugned action is an administrative order of a High Court, and no writ petition lies against such an order in view of the law laid down in the above case, the appellant cannot be non-suited on the ground of having failed to avail an alternative remedy. Rather, the invocation of the jurisdiction of this Court, *prima facie*, appears to be the only available legal course. Therefore, the objection is misconceived, untenable, and is liable to be overruled.

7. In this background, without touching upon the question of maintainability of the petition filed by the appellant under Article 175E(3) of the Constitution, this miscellaneous appeal against the administrative impugned order of the Registrar is partly allowed in the following terms, while holding:

- a) that the objections (a), (b), (c), and (e) contained in the impugned order can only be examined by the Court through judicial determination, and not by the Registrar or by a Judge hearing an appeal-in-chambers, such as the present one, on the administrative side. The above objections are, therefore, overruled; the impugned return notice is set aside, accordingly; and
- b) that as regards objection (d), the same falls within the administrative powers of the Registrar and is found to be justified; it is, therefore, sustained. The appellant shall remove the said objection to the satisfaction of the Registrar within one week. Upon compliance, the office shall register the constitutional petition of the appellant and fix the same before an appropriate Bench on the judicial side.

Judge

Islamabad, the
5th May, 2026
Approved for Reporting