

Judgment Sheet

JUDICIAL DEPARTMENT

W.P No.47872/2022

 $V_S.$

Federal Ombudsman etc.

J U D G M E N T

Date of Hearing	20.05.2024
Petitioner by:	M/s Waleed Iqbal, Wasif Majeed and Faisal Mehmood, Advocates
Respondent No.1 by:	Mr. Mohsin Raza Bhatti, Assistant Attorney General
Respondent No.2 by:	Hafiz Rehman Aziz, Mr. Bakhtiar Hyder Khan and Barrister Jannat Ali Kalyar, Advocates
On Court's Call:	Ms. Shaharbano Raza, Team Leader, Gender and Inclusion, LUMS.

Anwaar Hussain J. Through the present constitutional petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (“**the Constitution**”), challenge has been laid to order dated 18.07.2022, passed by respondent No.1/Federal Ombudsman for protection against harassment of women at the workplace, Islamabad (“**the Federal Ombudsman**”), on the complaint of respondent No.2 (“**the respondent**”).

2. By way of factual background, it has been noted that on 23.01.2021, the respondent filed a complaint with the Human Resource Grievance Committee (“**HR Committee**”) of the Lahore University of Management Sciences (“**LUMS**”) against the petitioner, alleging misogynistic behavior based on two sets of incidents that allegedly took place on 01.01.2021 and 04.01.2021. The incidents involved conversations between the petitioner and the respondent relating to SOPs for Covid handling at LUMS, which conversations

turned into a heated exchange on account of respondent's rigid position. The respondent alleged such behavior (of the petitioner) to be misogynistic, whereas, the petitioner asserted that it was a mere spontaneous heated conversation between the two colleagues. The HR Committee recorded the statements of the parties and examined various witnesses, and after a detailed inquiry gave its findings, *vide* report dated 30.03.2021, whereby, *inter alia*, it reached the conclusion that the allegation of misogynistic behaviour against the petitioner was not proved. The respondent preferred appeal in accordance with the LUMS' Policy on the harassment; however, later on, she withdrew/abandoned her appeal. Thereafter, the respondent filed a complaint on the same cause of action with the LUMS' Sexual Harassment Committee ("**the Harassment Committee**"). The Harassment Committee concluded its proceedings, *vide* its report dated 03.06.2021, on the basis of the respondent's unequivocal admission before the Harassment Committee that her complaint did not allege sexual harassment against the petitioner, therefore, the Harassment Committee had no jurisdiction to hear the complaint. The findings of the Harassment Committee were not further challenged before any forum. The respondent after the findings given by the aforesaid Committees filed a civil suit for recovery of damages before the Civil Court at Lahore on the basis of the same cause of action. In the meanwhile, the respondent filed yet another complaint with the Federal Ombudsman in June 2022, under Protection against Harassment of Women at the Workplace Act, 2010 ("**the Federal Act**"), which is the subject matter of the present petition. The respondent based the subject matter complaint on the basis of sexist harassment (remarks) that has been brought within the ambit of the term "harassment" through the 2022 Amendment Act¹ that came into force on 25.01.2022. The Federal Ombudsman issued notice to the

¹ See "The Protection against Harassment of Women at the Workplace (Amendment) Act, 2022" came into force on 25.01.2022 whereby sub-Clause (ii), Clause (h) of Section 2 has been inserted.

petitioner who appeared and filed an application/objection petition seeking dismissal of the complaint, *inter alia*, on the ground that the Federal Ombudsman lacks jurisdiction to entertain the complaint. The respondent submitted her reply to the aforesaid application/objection petition. The Federal Ombudsman, *vide* impugned order dated 18.07.2022 dismissed the jurisdictional objections raised by the petitioner, hence, this constitutional petition.

3. Learned counsel for the petitioner submit that the present case is a classic example of wrongful assumption of jurisdiction inasmuch as the present petitioner and the respondent worked for LUMS, which is not a trans-provincial organization, hence, the Federal Ombudsman has no jurisdiction to entertain the matter, under the Federal Act. Add that even the subject matter jurisdiction did not vest with the Federal Ombudsman, inasmuch as the complaint pertains to ‘sexist harassment (remarks)’ and not ‘sexual harassment’, and the former form of harassment was not included in the definition of harassment until 25.01.2022, whereas the alleged incidents of harassment took place in January 2021 and the respondent availed remedy before the Harassment Committee and the finding thereof was never challenged and the same has attained finality. Further contend that even if the matter has not attained finality, the jurisdiction vests with the Provincial Ombudsperson, under the Protection against Harassment of Women at the Workplace Act, 2010 (“**the Punjab Act**”). Placed reliance on the judgment of the Supreme Court of Pakistan in the case titled “Nadia Naz v. The President of Islamic Republic of Pakistan and others”², in support of their contentions.

4. Conversely, learned counsel for the respondent alongwith learned Law Officer have raised preliminary objection on the ground that present petition is directed against an interlocutory order and

² PLD 2021 SC 784

therefore, not maintainable. They further contend that LUMS has federal character since it is created by a Federal Statute and the President of Pakistan is its Chancellor, therefore, the jurisdiction has been rightly exercised. Add that the LUMS' policy itself refers to the Federal Act for the purpose of jurisdiction, therefore, the petitioner cannot assert that it is the Provincial Ombudsperson who has the jurisdiction under the Punjab Act.

5. In rebuttal, learned counsel for the petitioner submit that the policy of LUMS has been changed and the anomaly has been removed and it is the Provincial Ombudsperson, under the Punjab Act, which has the jurisdiction and not the Federal Ombudsman.

6. Arguments heard. Record perused.

7. The legal question before this Court is to determine whether the fact that an organization-LUMS in the present case, has been established under the federal charter will, *ipso facto*, render it amenable to the jurisdiction of the Federal Ombudsman, under the Federal Act?

8. Before proceeding further, it will be appropriate to address the preliminary objection raised by learned counsel for the respondent regarding the maintainability of the present petition on the ground that order impugned herein is interlocutory in nature. It is trite law that the principle of non-interference, by this Court, in interlocutory orders of the *fora* below is a matter of rule and refusal is an exception, however, when the orders passed by the Courts below are based on erroneous exercise of jurisdiction, this Court has supervisory jurisdiction to correct the same.

9. Adverting to the legal question involved, it will be advantageous to browse the case law relating to the operational contours of the two statutes i.e., the Federal Act and the Punjab Act as

the question whether the Federal Ombudsman, can assume jurisdiction over the complaint in which the cause of action arose in provincial territory-the Province of Punjab or whether, in such like matters, the jurisdiction vests with the Provincial Ombudsperson, under the Punjab Act, has already been subject matter of few leading cases.

10. In case reported as “Salim Javed Baig and others v. Federal Ombudsman and others”³, this Court held that the jurisdiction in such cases lies with the Provincial Ombudsperson as the subject of harassment against women had been devolved onto the provincial legislature, while considering that the subject matter of harassment against women was covered under Item No.25 of the Concurrent Legislative List, being Population, Planning and Social Welfare, which stood abolished, through the Eighteenth Amendment, on 20.04.2010, and all areas provided for under the abolished Concurrent Legislative List devolved on to the provinces and therefore, jurisdiction vests with the Provincial Ombudsperson and Federal Ombudsman can only exercise the jurisdiction to the extent of the Federal Capital Territory. The judgment of this Court in Salim Javed Baig case *supra* was relied upon by the Sindh High Court in case reported as “SZABIST (Shaheed Zulfiqar Ali Bhutto Institute of Science and Technology) through Authorized Representative vs Federal Ombudsman/Ombudsperson through Registrar and 3 others”⁴ to hold that the act of the Federal Ombudsman to assume jurisdiction in relation to a matter that fell within the domain of the Provincial Ombudsperson for Protection against Harassment of Women at workplace, at Karachi, was devoid of any legal authority.

³ PLD 2016 Lahore 433

⁴ PLD 2018 Sindh 581

The Islamabad High Court⁵ also followed the *ratio decidendi* laid down in case of Salim Javed Baig supra. However, in case of “Imran Maqbool, President, MCB Bank Limited Versus Federation of Pakistan through Secretary Law, Justice and Human Rights Division, Islamabad etc.”,⁶ a learned Division Bench of this Court held as under:

“10..... Therefore the subject of harassment at the workplace being a crime under the PPC means that Parliament and the Provinces both are competent to make laws with respect to the crime, procedure or evidence. Hence we find that the subject of protection of women from harassment does not fall under ‘population, planning and welfare’ of the CLL, rather it falls under the federal domain consequent to its international obligations and to the extent that the subject relates to criminal law.”

11. Learned Division Bench of this Court, in case of Imran Maqbool supra, was not persuaded with the reasoning of case of Salim Javed Baig supra, *inter alia*, for the reasons that the harassment, in any form, is a behavioral issue that adversely affects the work environment and State is obligated to extend protection to the women in the light of its obligations under the International Conventions⁷, as Pakistan has ratified these treaties, and the Federal Act was promulgated pursuant to said obligations under the international treaties and conventions, and the subject matter of protection of the workplace for women falls under Item 3 read with Item 32 of the Federal Legislative List of the Constitution, which includes implementing international treaties and conventions.

12. It is worth mentioning that the learned Division Bench in case of Imran Maqbool supra also did not overrule the Salim Javed Baig supra, rather, merely disagreed with the underlying reasoning of

⁵ “Jubilee Life Insurance Company Limited Vs The Federal Government through Secretary Law, etc.” [2021 PLC(CS)1563].

⁶ PLD 2019 Lahore 17

⁷ Universal Declaration of Human Rights; Convention on the Elimination of all forms of Discrimination Against Women, the International Labour Organization Convention 100; and the Convention for Equal Remuneration for Men and Women for Work and Convention 111

Salim Javed Baig case *supra* to the extent of the latter stipulating the subject having been devolved and the Federal Act being confined only to the capital/federal territory. In addition, in case of Imran Maqbool *supra*, it was also observed that the issue of trans-provincial organization was not taken into consideration by the learned Single Bench of this Court in case of Salim Javed Baig *supra* and while relying upon the *dicta* laid down in case reported as “Messrs Sui Southern Gas Company Ltd. and others v. Federation of Pakistan and others”⁸, the learned Division Bench held that the jurisdiction lies with the Federal Ombudsman in cases where the work place falls under the purview of a trans-provincial organization-an organization that transcends the provincial boundaries and operate in more than one province. Learned Division Bench concluded as under:

“12.Under the circumstances, we hold that if the employer or organization and its workplace falls strictly within the territorial boundaries of the Provincial Ombudsman, then jurisdiction vests with the Provincial Ombudsman and where the employer or organization transcends provincial boundaries such as in this case then jurisdiction vests with the Federal Ombudsman. To clarify we add that for the reasons stated herein we disagree with the findings in the Salim Javed Case that the Federal Ombudsman jurisdiction is limited to the federal capital area as the Federal Ombudsman is competent to hear complaints related to trans-provincial organizations, institutions, employers and workplace.”

It is imperative to note that at the time case of Salim Javed Baig *supra* was decided, the judgment in case of Sui Southern Gas Company *supra* had not been rendered. Sui Southern Gas Company case *supra* explicated that in respect of organizations and establishments that transcend the provincial territorial boundaries, the Labour Courts had no authority or jurisdiction to deal with the respective disputes involving such organizations and their employees.

⁸ 2018 SCMR 802

The said principle enunciated in case of Sui Southern Gas Company *supra* was stretched and applied, on analogical basis, to the harassment laws by holding that the organizations traversing beyond the provincial confines is subject to applicability of Federal Act and not the provincial enactment(s). Moreover, the Imran Magbool *case, supra*, further explicated the harassment laws by considering the nature of both the statutes as criminal, and held that both the Federal and provincial legislature can legislate with regard to criminal law in terms of Article 142(b) of the Constitution.

13. Having analyzed the jurisprudence developed so far on the subject, I would proceed to determine the present controversy in the light of the settled law that a provincial enactment is applicable within the provincial territory whereas the applicability of the Federal Act comes into play when the issue involves the Federal Territory and/or such organizations which transcend the provincial boundaries. Insofar as status of LUMS is concerned, argument of learned counsel for the respondent that LUMS is a federal institution as the President of Pakistan is its Chancellor and it is the Federal Ombudsman that has the jurisdiction is misconceived. The Federal Government had no direct financial and administrative control over LUMS. The Board of Trustees who had to run the affairs of LUMS are not consisted of any government officials or its nominees and the President of Pakistan is only its ceremonial head.

14. Even otherwise, perusal of Section 2(1) of the Punjab Act amply reveals that neither the applicability of the Punjab Act nor that of the Federal Act has been curtailed on the ground that an organization and/or establishment has been set up under the Federal statute or *vice versa*. Rather, the Punjab Act is fully applicable to the organization managed and established by the Federal Government. Section 2(1) of the Punjab Act reads as under:

“(1) “organization” means a Federal or Provincial Government Ministry, Division or department, a corporation or any autonomous or semiautonomous body, Educational Institutes, Medical facilities established or controlled by the Federal or Provincial Government or District Government or registered civil society associations or privately managed a commercial or an industrial establishment or institution, a company as defined in the Companies Ordinance, 1984 (XLVII of 1984) and includes any other registered private sector organization or institution;”

(Emphasis supplied)

The definition of the term ‘organization’ under the Punjab Act is unequivocal. Section 2(1) clearly envisages a Federal Division and/or Department as also any institution, *inter alia*, educational, established by the Federal Government to be an organization for the purpose of the Punjab Act. LUMS is an educational institution, covered under the definition of the term “organization”, under the Punjab Act. The fact that an institution was established by the Federal Government and/or has a federal character is not the litmus test to draw the conclusion that only Federal Act is applicable in cases of harassment of women at workplace. Similarly, *ratio decidendi* laid down in case of Imran Maqbool *supra* is clear i.e., unless an organization transcends the provincial boundaries, jurisdiction of the Provincial Ombudsperson for protection of woman against harassment at workplace is not ousted and no incident to trigger the assumption of jurisdiction by Federal Ombudsman takes place. Having the said legal position in sight, in present case, it is imperative to, *inter alia*, look at the character of the organization, its territorial location. No doubt that LUMS was granted the charter by the Federal Government, however, the charter reads as under:

“3. Establishment and Incorporation of the University:-

(1) *There shall be established at Lahore* a University to be called the Lahore University of Management Sciences consisting of:-”

(Emphasis supplied)

It is amply clear that LUMS, under the basic law as well as its charter, has been localized within the Province of Punjab (at Lahore). While the respondent side has laid emphasis on the charter of LUMS-being federal to contend that the Federal Act is applicable, they are oblivious of the fact that the geographical jurisdiction of the organization created under the charter is to be determined under the same charter/law that establishes the said organization and helps determine whether the organization falls within the territorial jurisdiction of a particular judicial forum. Thus, reliance on case of Imran Maqbool supra, for the purpose of assumption of jurisdiction, by Federal Ombudsman is misconceived. This Court holds that for the purpose of determining as to which of the two Ombudsmen (Federal or Provincial) in relation to protection of the Women from harassment at workplace has the jurisdiction in respect of harassment caused by or to the employee of an organization, the charter alone could not be made basis of such determination, more particularly, if the place of business, operations and activities of the organization were ‘localized’ in a particular province and/or city. Suffice to observe that the representative of LUMS was also heard who has submitted the copy of LUMS Sexual Harassment Policy, 2021, which defines the term Ombudsperson in the following manner:

“XIV. “Ombudsperson” means the office of the Ombudsperson, Government of Punjab provided for by the 2010 Act.”

It is amply clear that the LUMS, realizing its localized operations (at Lahore, Punjab) amended its policy and reference has been made to the Ombudsperson, Punjab. Thus, the argument of the respondent side

that the organizational policy refers to Federal Act is devoid of merit. Even otherwise, the organizational policy or any reference therein to any specific Ombudsman could not have overridden the legislative instrument and legal position.

15. In view of the preceding discussion, it is concluded that the complaint filed by the respondent against the petitioner was not maintainable before the Federal Ombudsman who had no jurisdiction to entertain and hear the same. The jurisdiction lies with the Provincial Ombudsperson, under the Punjab Act. The impugned order dated 18.07.2022 alongwith all the prior orders assuming jurisdiction in the matter are hereby declared to be without lawful authority and, therefore, set aside. The complaint of the respondent shall be deemed to have been returned to her, who may file the same before the Provincial Ombudsperson, if so advised. Having opined that the Federal Ombudsman had no jurisdiction to entertain the complaint of the respondent, other grounds agitated by the petitioner on merits of the case need not be gone into or commented upon lest it may prejudice the case of either side, before the competent forum.

16. **Allowed** in above terms.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Announced in open court on 21.06.2024

Judge

A.B**