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JUDGMENT SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Writ Petition No. 7682/2020

Dr. Sajid Iqbal

Vs.

University of Sargodha and others

JUDGMENT

Date of hearing:	**7.3.2023**
For the Petitioner:	Hafiz Tariq Nasim, Advocate, assisted by M/s Jawad Tariq Nasim, Usman Shafique Butt, and Muhammad Salman Ullah Khan, Advocates.
For Respondents No.1 & 2:	Mr Shan Saeed Ghuman, Advocate.
For Respondents No.3 & 4	Mr Sittar Sahil, Assistant Advocate General.
For Respondents No.5 & 6:	Mr Muhammad Afzal Ansari, Advocate.

Tariq Saleem Sheikh, J. – This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), is directed against the concurrent orders passed by the Syndicate of the University of Sargodha (the "University") and the Ombudsperson Punjab imposing the major penalty of removal from service on the Petitioner.

The facts

2. The University initially hired the Petitioner as an Assistant Professor of Mathematics (BS-19) on a contract basis. It regularized his services on 15.7.2015. The Petitioner was working as Head of the Department of Mathematics at the University's Bhakkar sub-campus when it removed him from service.

3. On 13.2.2019, Respondent No.6, a female student of the B.S. Mathematics programme at the University's Bhakkar sub-campus, posted a video on social media alleging that the Petitioner had harassed her for 1½ years. She accused him of sending her obscene videos and text messages and making unwanted advances. He threatened to ruin her

academic career when she rebuked him. Respondent No.5, the father of Respondent No.6, also lodged FIR No. 64/2019 dated 13.2.2019 with Police Station City Bhakkar against the Petitioner in this matter. The Additional Sessions Judge granted him pre-arrest bail on 3.4.2019.

4. On 15.2.2019, the Deputy Commissioner, Bhakkar, asked the University to initiate proceedings against the Petitioner under the Protection against Harassment of Women at the Workplace Act, 2010 (the "Act"), as well. In pursuance thereof, the Director of the Bhakkar sub-campus contacted Respondent No.6 who submitted a written complaint with him on 18.2.2019. He referred that complaint to the Sexual Harassment Committee (the "Inquiry Committee"), and on its recommendation, the Vice Chancellor suspended the Petitioner vide Office Order dated 25.2.2019. Besides, the Vice Chancellor approved the migration of Respondent No.6 to the University's Mianwali sub-campus.

5. The Inquiry Committee thoroughly investigated the complaint of Respondent No.6. It also obtained complete call data record of the Petitioner and Respondent No.6 and forensic reports of their cell phones. The Committee concluded that the Petitioner had engaged in sexual harassment, but Respondent No.6 was also not blameless. She got involved with him purposefully to get favours and afterwards turned to social media to bash him. She and her family tried to pressurize the Committee members during the proceedings. Therefore, the Inquiry Committee recommended the major penalty of removal of service for the Petitioner and disciplinary action against Respondent No.6 for violating the student code of conduct.

6. The Inquiry Committee's report was placed before the University's Syndicate during its meeting on 1.8.2019. The Syndicate imposed the penalty of removal from service on the Petitioner under sub-section (4)(ii)(c) of section 4 of the Act. Consequent thereupon, Office Order No. SU/VC/2785 dated 8.8.2019 was issued. The Petitioner filed an appeal with the Ombudsperson Punjab under section 6 of the Act, which was dismissed on 8.11.2019. He filed a representation against it before the Governor of the Punjab, who dismissed it by order dated 20.12.2019, holding that no such representation lies against the order of the Ombudsperson passed in appeal proceedings. One may only challenge the Ombudsperson's order under section 8(5) before the Governor under

section 9 of the Act. The Petitioner then sought review before the Governor, which was also dismissed on the ground of maintainability vide order dated 8.1.2020. He has now filed this constitutional petition.

7. The Petitioner was indicted in FIR No. 64/2019. On 2.6.2021, the Judicial Magistrate recorded the evidence of Respondent No.5 (complainant of the FIR) and Respondent No.6 as PW-1 and PW-2, respectively. Respondent No.5 stated he was "satisfied with the Petitioner's innocence." Neither had he extended life threats to his daughter (Respondent No.6) nor prepared any video, and he had no objection if he was acquitted. Respondent No.6 made a similar statement. The prosecutor requested the court to let him cross-examine both of them because they had turned hostile. The Judicial Magistrate permitted him, but it was in vain. The Petitioner then moved an application under section 249-A Cr.P.C. for his acquittal. The Judicial Magistrate accepted it by order dated 2.6.2021, stating it was a case of no evidence.

The submissions

8. Hafiz Tariq Nasim, Advocate, contends that Respondent No.6 plotted against the Petitioner for ulterior objectives. The fact that she filed the complaint with an unexplained delay of 1½ years casts doubt on the veracity of her allegation. He next contends that Respondent No.6, being a student of the University, does not fall within the definition of "employee" given in section 2(f) of the Act. As such, the proceedings against the Petitioner are *coram non judice*. Hafiz Nasim further contends that the Inquiry Committee did not conduct the inquiry in accordance with the law, which has seriously violated the Petitioner's rights under Articles 4 and 10-A of the Constitution. He maintains that the Committee did not hold a regular inquiry and instead relied on a questionnaire handed to him on 19.2.2019. It did not even afford him an opportunity to cross-examine Respondent No.6, which was mandatory under section 4(1)(c) of the Act. Resultantly, the Petitioner has been condemned as a sexual offender in the eyes of the public for the rest of his life without a fair chance to defend himself. Hafiz Nasim argues that neither the University's Syndicate nor the Ombudsperson has considered that Respondents No.5 & 6 exonerated the Petitioner before the Judicial Magistrate and that he has acquitted him in

case FIR No. 64/2019. In any event, the penalty imposed on the Petitioner is excessive and disproportionate to the alleged offence.

9. Mr Sittar Sahil, Assistant Advocate General, contends that the Petitioner's challenge to the applicability of the Act is unfounded and based on an incorrect interpretation of the law. According to him, students at universities and educational institutions who are victims of sexual harassment also have legal remedies under the Act. He has cited the following cases to support his argument: ***Protection Against Harassment of Women at Workplace, Islamabad (in the matter of Appeal No.1(20)/FOS of 2011)*** (2013 MLD 225), ***Fahad Faruqui v. SZABIST through President, and another*** (2019 PCr.LJ 806) and ***Asif Saleem v. Chairman Board of Governors, University of Lahore, and others*** (PLD 2019 Lahore 407). The Assistant Advocate General further contends that the Inquiry Committee gave the Petitioner a fair opportunity to defend himself. The messages exchanged between him and Respondent No.6 on their cell phones and WhatsApp, which forensic analysis has verified, corroborate the allegation against him. The Committee confronted the Petitioner with the aforementioned texts and forensic reports, but he could not refute them. The Inquiry Committee found him guilty after due process, and any irregularities in the procedure had not prejudiced him and would not vitiate the proceedings.

10. Advocate Shan Saeed Ghuman, the counsel for the University (Respondents No.1 and 2), has adopted the Assistant Advocate General's arguments. However, he adds that in harassment cases, the offender frequently escapes punishment because women, particularly female students, keep silent and do not raise their voices due to the threat to their reputation and, in the case of students, the risk of academic loss. In the present case, Respondent No.6 uploaded a video exposing the Petitioner's wrongdoing, and the University took him to task. The Petitioner traumatized Respondent No.6 and disgraced the sacred relationship between a teacher and a student. His offence was established during the inquiry. Mr Ghuman contends that the legal actions brought under the Act are distinct from those under the Pakistan Penal Code for which FIR No.64/2019 was registered. The Judicial Magistrate's order of acquittal dated 2.6.2021 has no bearing on the present case.

11. Mr Muhammad Afzal Ansari, Advocate, claims that the Petitioner pressurized Respondents No.5 & 6 to abandon the criminal case against him due to which they exonerated him before the Judicial Magistrate on 2.6.2021. However, they subsequently filed an appeal against the acquittal order that is still pending.

Determination

12. Kofi Annan says: "Violence against women is perhaps the most shameful human rights violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace." Ban Ki-moon states: "There is one universal truth, applicable to all countries, cultures and communities: violence against women is never acceptable, never excusable, never tolerable."

13. Article 23 of the Universal Declaration of Human Rights (UDHR) declares the right to work and favourable work conditions as a human right. Article 31 of the EU Charter of Fundamental Rights says that every worker has the right to work in safe, healthy, and dignified conditions. Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) specifically requires the States to ensure that women have equal work opportunities and safe working conditions. Other international instruments relevant to the discourse include (i) the Declaration on the Elimination of Violence Against Women (1993); (ii) the United Nations Fourth World Conference on Women (Beijing, 1995); (iii) ILO Discrimination (Employment and Occupation) Convention 1958 (No.111); (iv) Indigenous and Tribal Peoples Convention 1989 (No.169); (v) ILO Convention No. 190 and Recommendation No.206.[1]

14. The Supreme Court of Pakistan has held that the right to gender equality and a safe work environment is guaranteed as a fundamental right under Articles 9, 14, 18 & 25 of our Constitution of 1973.[2]

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[1] These are the first international labour standards to provide a common framework to prevent, remedy and eliminate violence and harassment in the world of work, including gender-based violence and harassment.

[2] *Uzma Naveed Chaudhary and others v. Federation of Pakistan and others* (PLD 2022 SC 783).

15. Pakistan's Parliament enacted the Protection against Harassment of Women at the Workplace Act, 2010 – published in the official Gazette on 11.3.2010. In ***Uzma Naveed Chaudhary and others v. Federation of Pakistan and others*** (PLD 2022 SC 783), the Supreme Court observed that the objective of the Act is to actualize the women's freedom to choose a profession or occupation in which they are treated as equals with dignity and honour, and where they can feel safe that their working environment is free of harassment, abuse and intimidation. The Act gives effect to Article 34 of our Constitution's Principles of Policy, which provides that "steps shall be taken to ensure full participation of women in all spheres of national life." The Act also helps Pakistan fulfil its international obligations under the treaties and conventions it has ratified.

16. The Act stated in section 1(2) that it applied to the entire country. Following the Eighteenth Amendment to the Constitution, on 5.1.2013, the Punjab Assembly passed the Punjab Protection Against Harassment of Women at Workplace (Amendment) Act, 2012 (III of 2013). Several changes have been made over the years to make it more effective.

17. Section 2(h) of the Act defines "harassment". At the time relevant to the decision of the present case, it read as follows:

> (h) "harassment" means any unwelcome sexual advance, request for sexual favours or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment.

18. Section 11 of the Act requires employers to make the "Code of Conduct" stipulated in the Schedule to the Act a part of their management policy. The Explanation to clause (ii) of the said Code of Conduct elucidates that the following are three significant manifestations of harassment in the work environment:

(a) **Abuse of authority.–** A demand by a person in authority, such as a supervisor, for sexual favours in order for the complainant to keep or obtain certain job benefits, be it a wage increase, a promotion, training opportunity, a transfer or the job itself.

(b) **Creating a hostile environment.–** Any unwelcome sexual advance, request for sexual favours or other verbal or physical conduct of a sexual nature which interferes with an individual's work performance or creates an intimidating, hostile, abusive or offensive work environment.

The typical "hostile environment" claim, in general, requires finding a pattern of offensive conduct. However, in cases where the harassment is particularly severe, such as in cases involving physical contact, a single offensive incident will constitute a violation.

(c) **Retaliation.–** The refusal to grant a sexual favour can result in retaliation, which may include limiting the employee's options for future promotions or training, distorting the evaluation reports, generating gossip against the employee or other ways of limiting access to his/her rights. Such behaviour is also a part of the harassment.

19. In the present case, Respondent No.6 brought the complaint after 1½ years. It cannot be dismissed only on the ground of delay, as the Petitioner wishes. In ***Uzma Naveed Chaudhary,*** *supra,* the Supreme Court held that in our social and cultural milieu, where prevailing notions of family honour and taboos play a vital role, it is challenging for a woman to speak up about instances involving sexual harassment. The victims, among other things, fear that the delinquent may level counter-allegations against them. Therefore, those who dare to come forward should not be turned away merely because they filed their complaint late. The courts, tribunals and authorities concerned must understand the victim's predicaments, take a lenient view on the issue of delay, and decide the case on merits. This will encourage victims to come forward to seek justice. The Supreme Court further stated: "The principle enunciated by this Court in several criminal cases[3] involving sexual assault, that delay in reporting the incident to the police in such cases is not material, equally applies to the complaints of sexual harassment made under the Act."

20. The Petitioner claims that the Act only applies to women who are regular or contractual employees in an organization. University students do not have a legal remedy under it. I am afraid the argument is fallacious.

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[3] *Irfan Ali v. State* (PLD 2020 SC 295); *Zahid v. State* (2020 SCMR 590); *Nasreen Bibi v. Farrukh Shahzad* (2015 SCMR 825); *Yasmin v. Majid* (2008 SCMR 1602); *Muhammad Abbas v. State* (PLD 2003 SC 863); *Mehboob Ahmad v. State* (1999 SCMR 1102); and *Nasreen v. Fayyaz Khan* (PLD 1991 SC 412).

A cumulative reading of the various provisions of the Act would show that any woman or man harassed by the employer or employee of an organization at a workplace can invoke the jurisdiction of the Ombudsperson or the Inquiry Committee. In this context, the definitions of "accused", "complainant", "organization", and "workplace" are particularly important. As per section 2(a), "accused" means an employer or employee of an organization against whom a complaint has been made under the Act. According to section 2(e), "complainant" means a woman or man who has made a complaint to the Ombudsperson or the Inquiry Committee on being aggrieved by an act of harassment. Section 2(l) states that an "organization" includes an educational institution. Under section 2(n), "workplace" means the place of work or the premises where an organization or the employer operates.

21. I, therefore, hold that the complaint of Respondent No.6 was competent.

22. The Petitioner's acquittal by the Judicial Magistrate in FIR No. 64/2019 does not preclude the University from proceeding against him under the Act. It is trite that proceedings before a domestic forum are separate from criminal proceedings, and the decision in the one has no bearing on the other. More importantly, in the present case, the Judicial Magistrate acquitted the Petitioner not on merits but under section 249-A Cr.P.C. There could be many reasons why Respondents No.5 & 6 backed out from criminal prosecution. The Petitioner cannot plead it as a ground for dropping proceedings under the Act. The following excerpt from ***Arif Ghafoor v. Managing Director, H.M.C., Taxila*** (PLD 2002 SC 13) is instructive:

> "… disciplinary proceedings and criminal proceedings by no stretch of imagination can be termed as synonymous and interchangeable. The "disciplinary proceeding" and "criminal proceedings" are quite distinct from each other, having altogether different characteristics. There is nothing common between the adjudicative forums by whom separate prescribed procedure and mechanism is followed for adjudication, and both forums have their own domain of jurisdiction. The decision of one forum would have no bearing on the decision of the other forum in any manner whatsoever. In the said background, it would be a misconceived notion to consider the acquittal in a criminal trial as an embargo against disciplinary proceedings. The learned Federal Service Tribunal has rightly referred to the law as laid down in [*Mir Nawaz Khan v. Federal Government, and others*] 1996 SCMR 315. It is worth mentioning that the factum of acquittal pressed time and again into service was not on merits, but on the contrary, it was an acquittal under section 249-A

> Cr.P.C. and no evidence worth the name could be produced by the prosecution to substantiate the allegations for reasons best known to it. Be that as it may, the acquittal was not on merits. Thus, the dictum laid down in [*Attaullah Sheikh v. WAPDA and others*] 2001 SCMR 269 and [*Waris Khan v. Inspector-General of Police, N.-W.F.P., Peshawar, and another*] 1998 SCMR 2003 heavily relied upon by Mr Ibrahim Satti, Advocate, cannot be made applicable in the peculiar circumstances of the case as discussed hereinabove. Had the case been decided on merits and after the recording of evidence, the situation would have been different."

23. The Petitioner also has a grievance that the Inquiry Committee has condemned him without following due process. Here, he has a point. Admittedly, on 19.2.2019, the Inquiry Committee issued the Petitioner a questionnaire to which he responded. Thereafter, it confronted him with messages exchanged between him and Respondent No.6 on their cellphones and WhatsApp, and the forensic reports, and concluded its findings. In ***Jan Muhammad v. General Manager, Karachi Telecommunication Region, Karachi, and another*** (1993 SCMR 1440), the Supreme Court held that a question and answer session could not be equated with a regular inquiry. It disapproved the inquiry proceedings conducted through a questionnaire without examining witnesses supporting the charge or defence.

24. Section 4 of the Act outlines the procedure for holding inquiries. Sub-section (1)(c) thereof states that the Inquiry Committee may examine any oral or documentary evidence supporting the charge or in defence of the accused that it deems necessary. In addition, it grants each side the right to cross-examine the witnesses produced against it.

25. Cross-examination is vital to test the credibility of a witness. Taylor writes: "Cross-examination is justly regarded as one of the most efficacious tests by means of which the law has devised for the discovery of truth and by means of which the situation of the witness with respect to the parties and to the subject of litigation, his interest, his motives, his inclination and prejudices, his character, his means of obtaining correct and certain knowledge of the facts to which he bears testimony, the manner in which he has used the means, his power of discernment, memory and description are fully investigated and ascertained."[4]

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[4] Extract from Taylor on Evidence 5th Edn., p.1238 (reproduced in AIYAR & AIYAR'S *The Principles and Precedents of the Art of Cross-Examination*, 10th Edn. published by Butterworths India at page-2).

26. In ***Browne v. Dunn***, [(1893) 6 R. 67], the British House of Lords held that “nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given.” In the case cited as ***Abel v. The Queen*** [(1955), 115 C.C.C. 119 (Que. Q.B.)], the Court held that “there can be no question of the importance of cross-examination … It is the ultimate means of demonstrating truth and of testing veracity. Cross-examination must be permitted so that an accused can make a full answer and defence. The opportunity to cross-examine witnesses is fundamental to providing a fair trial to an accused. This is an old and well-established principle that is closely linked to the presumption of innocence.” In ***Wolff, Warden et al. v. McDonnell*** [418 U.S. 539 (1974)], the U.S. Supreme Court observed that "without any right to confront and cross-examine adverse witnesses, the inmate is afforded no means to challenge the word of his accusers. Without these procedures, a disciplinary board cannot resolve disputed factual issues in any rational or accurate way. The hearing will thus amount to little more than a swearing contest, with each side telling its version of the facts – and, indeed, with only the prisoner’s story subject to being tested by cross-examination. In such a contest, it seems obvious to me that even the wrongfully charged inmate will invariably be the loser. I see no justification for the court's refusal to extend to prisoners these procedural safeguards which in every other context we have found to be among the minimum requirements of due process.” In ***Kartar Singh v. State of Punjab*** (1994) 3 SCC 569, the Supreme Court of India held that cross-examination is an acid test of the truthfulness of the statement made by a witness. In ***Ghulam Rasool Shah and another*** (2011 SCMR 735), the Supreme Court of Pakistan ruled that cross-examination is the most reliable method for judging the credibility of a witness. Statements admitted without cross-examination result in injustice. Hence, a reasonable opportunity for cross-examination must be provided.

27. Even in a domestic inquiry, the person charged with misconduct has a right to cross-examine the witnesses brought against him. In ***Meenglas Tea Estate v. Its Workmen*** (AIR 1963 SC 1719), the inquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned.

The Supreme Court of India ruled that the inquiry was vitiated because it was not conducted in accordance with the principles of natural justice. The relevant excerpt is reproduced below:

> "It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character, and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement, in effect, throws the burden upon the person charged to repel the charge without first making it out against him."

28. Article 10 of the Constitution, which guarantees the right to a fair trial, also applies to departmental inquiries. While the right to cross-examination is vital to the inquiry process, it is an essential component of a right to a fair trial as well. In the present case, the Inquiry Committee has violated the Petitioner's constitutional and statutory rights by denying him an opportunity to cross-examine the witnesses testifying against him. The Impugned Order cannot, therefore, be sustained.

29. In view of the above, this petition is accepted, and the Impugned Order is set aside. The case is remanded to the Inquiry Committee for *de novo* proceedings against the Petitioner. Since it is an old and serious matter, the Inquiry Committee shall conclude it within two months from receipt of a certified copy of this judgment.

(Tariq Saleem Sheikh)
Judge

Announced in open Court on _____

Judge

Approved for reporting

Judge

Naeem