

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(Judicial Department)

“Writ Petition No. 1873 of 2020”

Ms. Rumaisa Rubab

Versus

Federation of Pakistan through the Secretary & others

Petitioner By:	Mr. Raheel Azam Khan Niazi, Advocate.
Respondent No.3 By:	M/s Hafiz S.A. Rehman, M.Anwar Mughal, Sundas Riaz Ch., Muidassar Khalid Abbasi, Sheikh Rizwan Nawaz, Advocates
Respondent No.4 By:	Ms. Aaliya Zareen Abbasi, Advocate alongwith respondent No.4.
Federation By:	M/s Ch.Abdul Jabbar and Nazar Hussian Shah, Assistant Attorney General. Mr. Rehman Shahzad, Registrar, Ombudsman. M.Farooq, Section Officer (Lit), National Assembly.
Date of Hearing:	26.08.2020

Ghulam Azam Qambrani, J: Through this petition, the petitioner has invoked the jurisdiction of this Court filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

“In the above mentioned circumstances, it is humbly prayed that instant writ petition may kindly be issued by declaring that the impugned order dated 30.06.2020 issued by the respondent No.1 and the order dated 06.12.2019, passed by the respondent No.2, as illegal, unlawful and without lawful authority, thus ab-initio void.

It is further prayed that respondent No.2 may kindly be directed to resume proceedings in the

complaint of the petitioner dated 04.02.2019 (registered as Case # FOH-HQR/23/19) as per law and decide it on merit, after recording evidences and hearing the arguments.

It is also prayed that respondent No.3 may kindly be restrained from any sort of proceedings in the matter, till the disposal of this writ petition.

Any other relief which this honourable court deems fit appropriate may also be awarded.”

2. Briefly stated facts of the petition are that the petitioner was serving under respondent No.4, who, as alleged by the petitioner, sexually harassed her and the matter was reported through written complaint to the Secretary National Assembly on 24.04.2018, but the matter was not enquired into as per the provisions of the law “The Protection Against Harassment of Women at the Workplace, Act, 2010”. Being aggrieved the petitioner filed a complaint under the Protection against Harassment of Women at Workplace Act, 2010, before respondent No.2, the Federal Ombudsman on 04.02.2019, upon which notices were issued to respondent No.4, wherein he submitted his written reply on 20.03.2019. on 27.03.2019, respondent No.3 submitted an application before respondent No.2 which was contested by the petitioner through her rejoinder dated 27.03.2019 however, the respondent No.2 remanded the matter to respondent No.3 for inquiry vide order dated 06.12.2019. The petitioner being aggrieved, challenged the said order before the President of Pakistan through her representation dated 27.12.2019, which was rejected vide impugned order dated 30.06.2020, hence, the instant writ petition.

3. Learned counsel for the petitioner contended that the acts of the respondent are illegal, discriminatory and without lawful authority; that respondent No.2 has no authority under the law to remand the matter to respondent No.3 for inquiry which had not been carried out by him under the influence of respondent No.4. Further submitted that while passing the impugned order dated 30.06.2020, respondent No.1 failed to apply its independent mind by

putting the petitioner again at the mercy of respondent Nos.3 & 4 against whom the petitioner had filed the complaint before respondent No.2. Next contended that there is no provision of remand in the said law; that the speaker National Assembly marked the inquiry to respondent No.3 on 11.02.2020, but the same has not yet been finalized inspite of the lapse of about six months due to which promotion of the petitioner has been intentionally delayed; that the petitioner is being pressurized one way or the other to give up her stance against her sexual harassment; that the honour, prestige, and dignity of the women is protected under Article 09 of the Constitution which is at stake due to sexual harassment at the workplace by respondent No.4.

4. On the other hand, learned Assistant Attorney General assisted by the learned counsel for the respondents submitted that the instant petition is premature as respondent No.2 has not yet finally decided the complaint of the petitioner; that the instant petition is based upon the malafide and has been filed just to create hindrance in the conclusion of the inquiry. Further submitted that the complaint of the petitioner is also not maintainable and is liable to be dismissed. Next submitted that the inquiry proceedings have commenced before the Inquiry Committee and the petitioner has appeared before the Inquiry Committee, produced evidence meaning thereby that she has accepted the impugned order, therefore, this petition has become infructuous. Lastly, submitted for dismissal of the instant petition.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record with their able assistance.

6. For ready reference Rule 10 sub-rule 7 of The Protection against Harassment of Women at the Workplace (Filing and Disposal of Complaints) Rules 2013 is reproduced hereunder:-

“10. Procedure before the Ombudsman.---- (1).....

(2).....

(3).....

(4).....

(5).....

(6).....

(7) In the absence of any express provision regarding conduct of proceedings or inquiry, the Ombudsman shall have the power to conduct the proceedings or inquiry as he deems fit and just according to circumstances of the case to arrive at a conclusion and formulate his recommendations and findings in the case."

Perusal of the above referred Rule 10 (7) reveals that the Ombudsman has the power to remand the case to the harassment committee of National Assembly if he deems fit so, and as per record, the proceedings before the said committee have commenced and the petitioner has already joined the proceedings before the Inquiry Committee, produced evidence meaning thereby that she has accepted the impugned order. Record further shows that the said inquiry committee is a high powered body comprising of the followings:-

- i. A BS-21 officer of the Federal Government.
- ii. A retired District and Sessions Judge.
- iii. A lady Member, Deputy Director, Research & Speech Writing.

The above said composition of the committee reveals that all the members of the inquiry committee are independent and they are in a better position to resolve the matter.

7. Further the petitioner has the remedy of filing a complaint before the inquiry committee through any of its member or the ombudsman under Rule 4 (1) of *the Protection against Harassment of Women at the Workplace (Filing and Disposal of Complaints) Rules 2013*, but she did not approach the said fora and filed the instant petition after a lapse of about six years of the alleged incident. Sub-clause 3 of Section 8 of the Act, 2010 empowers the Ombudsman that he may himself or can entrust the inquiry to whom

he deems fit. For ready reference section 8 (3) is reproduced hereunder:-

*"8. Ombudsman to enquire into complaint.---- (1).....
(2).....
(3) The Ombudsman shall conduct an inquiry into the matter according to the rules made under this Act and conduct proceedings as the Ombudsman deems proper."*

8. Record further shows that the matter is still pending with the Ombudsman and no final order has yet been passed on the complaint of the petitioner therefore the instant petition is not maintainable. Reliance in this regard is placed upon the case reported as "Saleem Javed Baig and others versus Federal Ombudsman and others" (PLD 2016 Lahore 248) wherein it has been held as under:-

"No adverse order has been passed against the petitioners till today and they have simply been called upon to appear and defend themselves in a complaint filed against them. In the absence of any finding given by the Federal Ombudsman this petition would not be maintainable."

9. In the case of "The State through Advocate General, N.W.F.P., Peshawar Vs. Naeemullah Khan" (2001 SCMR 1461), it has been held as under:-

"For proper appreciation of the proposition, it would be appropriate to reproduce section 46 of the Act, which runs as under:--

"46. All proceedings relating to offences and criminal liabilities under this Act shall be governed by the Code of Criminal Procedure 1898. "

The word 'proceeding' has not been defined in the Act itself, therefore, we would advert to its dictionary meaning. According to Chambers English Dictionary, 7th Edition, the word 'proceeding' means:--

"a going forward: progress: advancement: a course of conduct: perh. An advantage: a step: an operation: a transaction: a record of the transactions of a society."

According to Legal Thesaurus, Regular Edition, by William C. Burton, the word 'proceeding' means:--

"action, action, action at law, case, cause, conduct of a lawsuit course of an action at law, dispute, hearing, lawsuit, legal action, legal procedure, litigation, matter, performance, prescribed method of action, prescribed mode of action, procedure, process prosecution, series of events, step, steps in the prosecution of an action, suit, suit at law, transaction, trial undertaking. ?

According to Law Lexicon Volume-II, the word 'proceeding' means:--

"Proceeding in a general sense means 'the form and manner of conducting judicial business before a Court of judicial officer'. It can include within itself suit, appeal and second appeal: Ram Narain v. Urmila 1980 All 344(6). The legal pursuit of a remedy, suit, appeal and second appeal are really but steps in the series of all connected '.)y intrinsic unity and are to be regarded as one legal."

The meaning of the word 'proceeding' according to American Publication "Words and Phrases" at page 83, are as under:--

"The term 'proceedings' is a very comprehensive term and, generally speaking', means a prescribed course of action for enforcing a legal right and hence it necessarily embraces the requisite steps by which judicial action is invoked. A 'proceeding would include every step taken towards the further progress of a cause in Court or before a Tribunal, where it may be pending. It is the step towards the objective to be achieved, say for instance the judgment in a pending suit. The proceeding commences with the first step by which the machinery of the law is put into motion in motion in order to take cognisance of the case. It is indeed a comprehensive expression and includes all possible steps in the action under the law, from its commencement to the execution of the judgment."

The word 'proceeding' also came under consideration in the following cases, wherein it has been interpreted as follows:--

In Satyahari v. The State AIR 1953 Calcutta 661, it was held:--

"It is true that section 496, Criminal Procedure Code to which reference has been made by Mr. Dutta the words 'proceedings before a Court' are used in wider sense and not in the restricted sense of judicial proceedings alone. But in section 12 of Act 21 of 1949 it would

appear that the word 'proceedings' must have been used in a restricted sense of 'judicial proceedings'. In section 12 there is reference to proceedings pending in a Special Court. Now proceedings pending in a Special Court could be only judicial proceedings because proceedings before a Special Court could be started only on complaint or on receipt of a charge-sheet. Since the term 'any proceedings in other Court' is used in the same context in section 12 of Act.21 of 1949 it would be logical to hold that the proceedings pending in other Court also would mean judicial proceedings and not proceedings in the wider sense such as is used in section 496 Criminal Procedure Code."

In the above case, it was further observed:--

"Before that stage is reached the accused must be produced before an ordinary Magistrate and it cannot be argued that since the accused is produced before the ordinary Magistrate and the question of bail is considered there is a proceeding before the Court and therefore section 12 of Act 21 of 1949 bars the jurisdiction of the Special Court. We must agree, therefore, with the learned Special Judge in holding that the words 'proceedings pending before a Court' in section 12 of Act 21 of 1949 would mean judicial proceedings which started with the submission of a charge-sheet or a complaint or taking cognisance thereon. In this case there were no proceedings pending on 9-4-1952. when the Ordinance came into force, and therefore, section 12 of the Act does not bar the jurisdiction of the Special Court."

10. In *Jan Muhammad and another v. Home Secretary, Government of West Pakistan and others* PLD 1968 Lahore 1455, a Full Bench of the Lahore High Court while answering the question "on a true interpretation of section 25 of the West Pakistan Criminal Law (Amendment) Act (VII of 1963), has the accused person a right to be represented before the Commissioner at the time he is going to refer the case to the Tribunal in the exercise of the powers vested in him under section 3 of the Act", held as under:--

"Therefore, taking everything into consideration, in our opinion the expression 'proceedings under this Act' within the meaning of section 25, is quite comprehensive so as to include the very first step taken by the Commissioner to put the machinery of the law under section 3 in motion and all the proceedings taken in pursuance thereto in which the parties are entitled to be represented by a legal practitioner of their choice as allowed by section 25 of the Act. It, therefore, follows, that the accused has a right of hearing before the

Commissioner in the course of the proceedings taken by him under section 3 of the Act."

In *R. Darbarilal v. Rajendra Kumar* AIR 1970 Madhya Pradesh 1, a Full Bench construed the words 'suit or proceeding' as under:--

"The problem of construction, which this Full Bench has to face, could have been easily avoided if instead of using the words 'suit or proceeding' in the opening portions of subsections (1) and (2) the words 'suit or appeal' were used. However, the careless drafting has not made the section so ambiguous that its meaning cannot be gathered. As we have already pointed out, the key to the solution is in the use of the words 'suit or appeal' in the concluding portion of subsection (2) for the same subject-matter, which is described as suit or proceeding' in the opening portions of subsections (1) and (2) which clearly shows that the word proceeding is used to mean an appeal. "

In another case, *Ghulam Muhammad v. The State* PLD 1979 Quetta 1, while the question, 'from what stage the proceedings would be deemed to have commenced in a case under the Ordinance so as to exclude the operation of the Code of Criminal Procedure' it was held:--

"Accordingly in the light of the scheme of the Ordinance the interpretation of the word 'proceeding' given in the case of *Emperor v. Fazlur Rehman and others* AIR 1937 Pesh. 52 above, i.e. 'whole bundle of actions taken and recorded by the Court from the moment of taking cognisance of the case until its disposal' would be most relevant. In order to understand the meaning and scope of this term as used in sections 3 to 28 of the Ordinance with further accuracy, we may better advert to the preamble of the Ordinance as well which is as under:--

'An Ordinance to make a special provision for trial of certain offences in certain areas of West Pakistan':--

From the recital of the preamble it is manifest that the Ordinance provides for the trial of offences so that proceedings in a case under the Ordinance can only be taken to cover that aspect of the case which deals with trial of case. Hence, all what is done in this regard starting from the commencing point of the Ordinance with the taking of

cognisance of offence upto the stage of the execution of the judgment is proceeding. It is thus, obvious that the moment cognisance of an offence is taken by the District Magistrate acting under the Ordinance its operation commences to the exclusion of the Code and Evidence Act, by virtue of sections 3 and 28 of the Ordinance."

In Muhammad Farash Khan v. Nishadar Jan PLD 1983 SC (AJ&K) 43, it was held:

'Proceedings' is a comprehensive term and, generally speaking means a prescribed course of action for enforcing a legal right and hence it necessarily embraces the requisite steps by which a judicial action is invoked" ...

...Therefore, we are of the view that the word 'proceeding' used in section 24 of the Code of Civil Procedure, is wide enough to cover any proceedings of civil nature and is used to include all civil proceedings of any nature and, in fact, is meant to meet eventuality of the nature before us and all eventualities of alike nature."

In Karim Bibi v. Hussain Bakhsh PLD 1984 SC 344, it was held:-

"In the light of the aforesaid definition the proceedings under the Displaced Persons (Compensation and Rehabilitation) Act would seem to commence with the application of a person entitled to the transfer of a property in the compensation pool under the Schedule and the Schemes framed thereunder. Normally the application will be disposed of by an order passed by the Deputy Settlement Commissioner which will apparently be the original in the proceedings. Any party aggrieved by such an order may then invoke appellate or revisional jurisdiction conferred under the statute before the higher authorities or officers. In such a case the proceedings remain the same until their conclusion by the order of the final authority as all the intermediary stages are steps taken towards the further progress of a cause or towards the objective to be achieved,. the transfer of a particular property to the person entitled thereto under the relevant provisions of law. Before the amendment of the Displaced Persons (Compensation and Rehabilitation) Act in 1973 there was a right of appeal provided by section 19. Therefore, no Letters Patent Appeal was then competent against the order of a Single Judge of the High Court to a larger Bench of the same High Court. Similarly there can be no dispute that in cases in which the original order was passed

after the aforesaid amendment of law such appeal was competent as the right of appeal under the Displaced Persons (Compensation and Rehabilitation) Act was taken away by the amendment. "

In' Wazir Laiq v. The State and others PLD 1987 SC 35, this Court while interpreting the word 'any proceeding' used in section 24 of the Provincially Administered Tribal Areas Criminal Laws (Special Provisions) Regulation, 1975, observed as under:--

"Testing the meaning of the 'word 'proceeding', we find from section 24 of the Regulation that each and every proceeding is co?-related with its regularity and the end-product namely, decision, sentence or order. There is no limitation or reservation in the language of this provision so as to give to it a narrow meaning. The nature and the scope of the statute also in no way limits or restricts its meaning. Therefore, we see no justification to hold that the application for bail ending in an order either granting bail or refusing it would not be covered by the words 'any proceedings' in the section. The High Court has read limitation by reference to section 23 where this word has not been used. But there the words used are 'any party aggrieved by any decision given, sentence passed or order made. Obviously the right conferred is the right of appeal against an order, decision or sentence. In this context, a party cannot be aggrieved by a mere proceeding, and therefore, this word has rightly not been used. Again there is nothing to the text of either section 23 or any other section of the Regulation so as to make proceedings meaningful only upon the cognisance of the scheduled offence by the Deputy Commissioner. Section 24 of the Regulation has given wider jurisdiction to the revisional authority to examine the legality or propriety of any proceeding, decision or order. Eminently, therefore, any matter at an intermediate stage under the Regulation before a final verdict is given could be examined to determine its legality or propriety. As against it, the appellate powers do not extend to such an examination. The High Court was, accordingly, in error to hold so while denying jurisdiction to the Additional Secretary exercising powers of the Government.

The power to grant bail is independently conferred under section 126 of the Regulation irrespective of whether the matter is brought under the Regulation or not. It is also significant to mention that by inserting section 15-A to the Regulation, the Deputy Commissioner is given the power to extend the time for completing the investigation This limited control manifestly shows that even at that stage the Deputy

Commissioner does exercise some power even though the case is not ripe for taking cognisance. "

In yet another case reported as Muhammad Naseem v. Government of N.-W. F. P. 1990 CLC 1693; it was held:--

"As defined in the case of Mst. Karim Bibi and others v. Hussain Bakhsh and another PLD 1984 SC 344 'the term 'proceedings' is a very comprehensive term and generally speaking, means a prescribed course of action for enforcing a legal right and hence it necessarily embraces the requisite steps by which judicial action is invoked.' The proceedings are still pending or lying before the Registrar so long as impugned order is holding the field. The jurisdiction conferred under section 64-A is both revisional as well as supervisory and superintending in its nature qua any proceedings or inquiry. Restricted construction cannot be put on the plain phraseology employed in the section itself. The petitioners could therefore, impeach the action taken by the Registrar by making a revision petition to the Provincial Government to which he is subordinate. It is an effective and efficacious remedy, especially when no specific mala fides is urged against the Provincial Government."

In Habib Bank Limited v. The State 1993 SCMR 1853, it was observed:--

"The power of High Court is excluded to examine the propriety of any sentence under its revisional powers. However, in my view the power to examine the correctness of an 'order of acquittal' is not barred by the provisions of the Ordinance. The powers of the High Court remain intact and such powers cannot be taken away by Amy jurisprudential analogy. The ouster of power of High Court in its revisional jurisdiction cannot be accepted simply because the Ordinance is silent about an appeal against acquittal."

11. Keeping in view the literary meaning and the, interpretation of the word 'proceeding' as interpreted in various pronouncements given above, I am of the opinion that the word 'proceedings' is a comprehensive expression which includes every step taken towards further progress of a cause in Court or Tribunal, from its commencement till its disposal. In legal terminology the word "proceedings" means the instituting or carrying on of an action of law. Generally, a 'proceeding' is the form and manner of conducting judicial business before a Court or judicial officer, including all possible steps in an action from its commencement to the execution of a judgment and in a more particular sense it is any application to a Court of justice for aid in enforcement of rights, for relief, for redress of injuries, or

damages or for any remedial object. It in its general use comprehends every step taken or measure adopted in prosecution or defence of an action."

12. In view of the above facts and circumstances, it is crystal clear that no adverse order has been passed against the petitioner till today and the Federal Ombudsman has simply forward the matter to the Inquiry Committee of the National Assembly and further that it is also not a remand order; therefore, in the absence of any finding given by the Federal Ombudsman, this petition is not maintainable

13. For the foregoing reasons, I find that no illegality or irregularity has been committed while passing the impugned order passed by the respondents No.1 & 2. The instant petition having no force is hereby **dismissed**.

Ghulam Azam Qambrani
Judge

Announced in open court, on 1st sep: 2020.

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