

## **ORDER SHEET.**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

#### **Writ Petition No. 91/2021**

Qazi Zaheer Ahmad.

***Versus***

Federal Ombudsman Secretariat for Protection against Harassment at Workplace,  
Islamabad and others.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(01)	13.01.2021	Mr. Ghulam Mehboob Khokhar, Advocate for the petitioner.

The petitioner is aggrieved by a complaint filed by  
respondent No.2 before the Federal Ombudsman for  
Protection against Harassment at Workplace, Islamabad/  
respondent No.1 on 29.07.2020.

2. Learned counsel for the petitioner states that  
respondent No.2 filed a complaint on 29.07.2020 for  
being harassed by the petitioner within the meaning of  
Section 2(h) of the Protection against Harassment at the  
Workplace Act, 2010 ("**Act**"); that the complaint was  
taken up by the Inquiry Committee established under  
Section 3 of the Act and after informal counseling, a  
compromise agreement was reached on 04.08.2020,  
which states the following:-

Government of Pakistan  
Ministries of Industries & Production  
\*\*\*\*\*

Islamabad, the 4<sup>th</sup> August, 2020

Subject: **Reconciliation in respect of  
Harassment Case and Withdrawal of  
Harassment Application.**

**Statement of Mr. Qazi Zaheer Ahmed,  
Sr. JS(IF).**

Reference the subject I Qazi Zaheer Ahmed,  
BS-21, Sr. Joint Secretary of Ministry of Industries &  
Production, hereby, in the presence of the witnesses,  
apologize to Mrs. Asiya Noor, BS 16, APS/In-charge-Record

Room, Ministry of Industries & Production for having intentionally or unintentionally caused her to feel harassed or threatened, or for having caused her any intentional or unintentional mental distress, or any harm to her reputation.

2. I also assure her that I shall not in any way try to misuse my official capacity to directly or indirectly victimize her in future, or be a part of any revengeful action against her, or punish her for having filed a harassment case against me.

Sd/  
Qazi Zaheer Ahmed  
Sr. JS(IF)

**Statement of Asiya Noor, APS.**

Reference the subject I Asiya Noor, APS/InCharge Record Room, hereby withdraw my harassment application against Mr. Qazi Zaheer Ahmed, Sr.JS, in the presence of witnesses, subject to receiving and acknowledging an apology from him and on assurance that this shall not be followed by any direct or indirect victimization on his part, or misuse of his official position to take from me in any direct or indirect way I the future.

Sd/  
Asiya Noor  
APS/Incharge Record Room.

Witness 1.  
Dr. Usman Ghani Khattak, DS (Admin).  
Witness 2.  
Zakira Akram, Section Officer (Admin)  
Witness 3.  
Shahla Kausar, APS

3. Subsequent to the compromise the petitioner was transferred to another Ministry on 01.09.2020. However, prior to that respondent No.3 initiated disciplinary proceedings against the complainant/ respondent No.2 purportedly for her absence from the office. Subsequent to such proceedings, the complainant filed an application before the Secretary, Ministry of Industries and Production on 31.08.2020 to reinstate proceedings in her prior complaint for harassment. The Inquiry Committee agreed to reopening the complaint against the petitioner on 07.09.2020, subject to filing of fresh application by respondent No.2. However, before receiving such response from the Inquiry Committee to her application

dated 31.08.2020 the complainant filed an application before the Federal Ombudsman on 03.09.2020.

4. Learned counsel for the petitioner submits that once a compromise agreement was reached, respondent No.2 was barred from pursuing her complaint before the Federal Ombudsman; that under Section 8 of the Act, the petitioner could file a complaint either before the Inquiry Committee or before the Federal Ombudsman and not before both forums; that in the adjudication proceedings before Respondent No.1, the question of maintainability has not so far been decided and, therefore, the proceedings before respondent No.1 are without jurisdiction. Thus feeling aggrieved, the petitioner has filed instant petition and this Court should intervene and exercise supervisory jurisdiction. Learned counsel for the petitioner relies upon Suo Motu Case re: *"the issue as to whether compounding of an offence under Section 345 Cr.PC amounts to acquittal of the accused person or not"* [PLD 2018 SC 703].

5. I have gone through the complaint filed before respondent No.1 by respondent No.2 which alleges that she was subjected to harassment by the petitioner and decided not to pursue her complaint on the basis of assurances that were recorded in the so called compromise agreement dated 04.08.2020. And that once the assurances were not honored and the compromise was agreement breached, respondent No.2 pressed her complaint initially before the department and subsequently before respondent No.1. From its language,

the compromise agreement dated 04.08.2020 is of a conditional nature which includes a promise that respondent No.2 shall not be victimized on behest of the petitioner, and once respondent No.2 sensed that was being so victimized for having filed a complaint in the first place, she pressed her complaint again in the aftermath of breach of the promises made in the compromise agreement.

6. I have heard the learned counsel for the petitioner and pursued the order sheets of the matter pending before respondent No.1. The order sheet dated 25.11.2020 notes that the argument on maintainability is to be heard on 08.12.2020. The order dated 08.12.2020 is not annexed with the file. Learned counsel for the petitioner states that when the arguments were heard no final decision of maintainability was recorded, but has not appended the said order which he claims to be the immediate source of the petitioner's grievance.

7. In view of the aforesaid, the learned counsel for the petitioner has failed to point out any jurisdictional defect in the proceedings pending before respondent No.1. The compromise agreement is actually an apology and an admission of sorts by the petitioner that his conduct may have "intentionally or unintentionally" caused harassment to respondent No.2, coupled with the promise of not "misusing his official capacity" as a senior officer "to directly or indirectly victimize her in future", followed by conditional withdrawal of the complaint by respondent No.2 in reliance upon the representation and

promises made therein. In view of the text of the complaint filed by respondent No.2 before respondent No.1, her cause of action for re-agitating her harassment complaint stems from her belief that the representation and promises made to her, in reliance upon which she withdrew her complaint, had been breached and she was infact being victimized on behest of the petitioner. The veracity of the allegations made by respondent No.2 cannot be determined by this Court as it involves a factual controversy and the subject matter falls within the jurisdiction of respondent No.1 in view of Sections 8 and 10 of the Act. But given the language of the compromise agreement and the acknowledgment that the petitioner's action had the effect of harassing respondent No.2, for which he apologized, it is for respondent No.1 to determine whether or not subsequent disciplinary action against respondent No.2 by respondent No.3 amounted to reprisal and victimization of respondent No.2 for having filed a harassment complaint against the petitioner.

8. The intent of the legislature in promulgating the Act was to provide a safe work environment to women, to protect them against harassment and to provide an informal but efficacious remedy to have complaints of harassment adjudicated before the Inquiry Committee or the Ombudsman, at the option of the complainant. Under Section 6 any party aggrieved by the decision of the Competent Authority has a right to file an appeal before the Ombudsman. And Section 8(i) provides unequivocally

that "any employee shall have the option to prefer a complaint either to the Ombudsman or the Inquiry Committee."

9. The scheme of the Act is unambiguous. An employee can file a complaint before the Inquiry Committee or the Ombudsman. If the complainant or the defendant is aggrieved by an order of the Competent Authority on the basis of the recommendation of the Inquiry Committee, Section 6 creates a right of appeal for the aggrieved party before the Ombudsman. Further, as aforesaid, a complaint can also be filed by the complainant directly before the Ombudsman. Thus, the argument of the learned counsel for the petitioner that the proceedings before respondent No.1 suffer from jurisdictional defect merely because respondent No.2 had previously approached the Inquiry Committee is misconceived. If a complainant is dissatisfied with the action or inaction of the Inquiry Committee or the Competent Authority, it is the Ombudsman that the complainant ought to approach for redressal of such grievance in view of the scheme of the Act.

10. The Act is a special law meant to protect women in the workplace and provide them with a means for redress of grievances that is efficacious, relatively informal, and protects the privacy of such proceedings and their sensitive subject matter. It is settled law that Constitutional Courts are under an obligation to give effect to statutory law as opposed to interpreting text such that it renders provisions of law redundant.

11. The legislature has also promulgated the Federal Ombudsman Institutional Reforms Act, 2013 (**"Act"**) that is to be read together with the Act having been included within the definition of "relevant legislation" of the 2013 Act. Section 18 of the 2013 Act states the following:

"No court or authority shall have jurisdiction to entertain a matter which falls within the jurisdiction of an Ombudsman nor any court or authority shall assume jurisdiction in respect of any matter pending with or decided by an Ombudsman."

12. Under Article 175 of the Constitution of Islamic Republic of Pakistan, this Court is endowed with such jurisdiction as vested in it by the Constitution or law. The Honorable Supreme Court held the following in "*S.M. Waseem Ashraf v. Federation of Pakistan*" [2013 SCMR 338 Supreme Court]:

"...according to Article 175(2) of the Constitution of the Islamic Republic of Pakistan, 1973 "No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law". From the above quoted language of this Sub-Article, it is unambiguously clear that a bar, and a prohibition has been placed that "No" Court in Pakistan shall exercise any jurisdiction in any matter brought before it until and unless, such jurisdiction has been conferred upon it by the Constitution itself or under any law. The word "save" appearing in the Sub-Article has clear connotation of the word "except" for the purpose of construing the above, meaning thereby that "No" Court shall have the jurisdiction except as has been

conferred upon it by the Constitution and/or law.”

13. Section 18 of the 2013 Act is an ouster clause that prohibits courts from assuming jurisdiction in relation to a matter that (i) “falls within the jurisdiction of an Ombudsman”, or is (ii) “pending with or decided by an ombudsman”. The jurisprudence in relation to ouster clauses is well-established by now: orders and proceedings are amenable to judicial review to the extent that they suffer from lack of jurisdiction, *corum non judice* or mala fides and that ouster clauses cannot oust jurisdiction of constitutional courts in relation to acts and/or proceedings that suffer from such infirmity. Reliance is placed on Pir Sabir Shah’s case [PLD 1994 SC 738], Sardar Farooq Ahmed Khan Laghari’s case [PLD 1992 SC 57] and District Bar Association’s case [PLD 2015 SC 401]. In Chief Justice of Pakistan Vs. President of Pakistan [PLD 2010 SC 61] after discussing the relevant case law, the Hon’ble Supreme Court held that:

“We reiterate the above noticed principle enunciated by this Court that while this Court respects the ouster clauses wherever they occur in the Constitution or in any other law, it is on account of the same respect that this Court would interpret such-like clauses as not extending immunity to acts which were coram non judice or which were taken mala fide or the ones which had been done without jurisdiction.”

14. The effect of Section 18 of the 2013 Act came up for interpretation before the learned Lahore High Court in



*"Saleem Baig Javed Vs. Federal Ombudsman and others"*

[PLD 2016 Lahore 433], where it was held that:

"Section 18 is a sub-constitutional legislation and cannot control or regulate the powers of the constitutional court under the Constitution. Reliance is placed on a full bench judgment of this Court in Arshad Mehmood v. Commissioner etc. (PLD 2014 Lahore 221), which has been upheld by the august Supreme Court of Pakistan in Election Commission of Pakistan through Secretary v. Province of Punjab through Chief Secretary and others (PLD 2014 SC 463)".

15. The question of whether an order passed by the Ombudsman appointed under the Act could be assailed before the High Court came up in *"Syed Mazhar Hussain and other Vs. President of the Islamic Republic of Pakistan and others"* [2018 MLD 327 Islamabad] and it was held by this court that:

"It is trite law that a petition under Article 199 of the Constitution seeking setting aside of quasi-judicial order the court is not to act as court of appeal rather it to see whether any illegality or jurisdictional error has been committed by the forum concerned. Reliance is placed on case titled as "Ali Anwar v. Government of Sindh" (2012 YLR 183), wherein, the Division Bench of Hon'ble Sindh High Court, observed that High Court in exercise of Constitutional jurisdiction cannot sit as a court of appeal but where order passed by court, suffers from any jurisdictional defect or violates any provision of law, invocation of Constitutional jurisdiction would be justified."

16. In view of settled principles of law, the jurisprudence expounded by the Honorable Supreme Court and Section 18 of the 2013 Act, this court can only exercise jurisdiction in relation to a proceeding pending

before the Ombudsman or an order passed by the Ombudsman if one of the following conditions is satisfied:

(i) the subject-matter of the complaint pending before the Ombudsman or that forms the subject matter of an order passed by the Ombudsman is such that falls beyond the authority and jurisdiction of the Ombudsman as defined in the Act and thus suffers from jurisdictional defect and the Ombudsman is coram non judice;

(ii) the order passed by the Ombudsman is such that the Ombudsman has no authority to pass and it thus suffers from lack of jurisdiction or excess of jurisdiction and consequently mala fide in law;

(iii) the proceedings being conducted and/or order passed suffers from mala fide in fact;

(iv) the proceedings continuing before the Ombudsman or the order passed by the Ombudsman undermine the fundamental rights of a citizen, especially the right guaranteed under Article 10-A of the Constitution.

This court must ordinarily apply restraint in exercise of its discretionary constitutional jurisdiction in relation to proceedings pending before an Ombudsman and give effect to the letter and spirit of Section 18 of the 2013 Act. It may, however, elect to exercise its jurisdiction in the interest of justice where (A) a challenge to an order passed by the Ombudsman or proceeding pending before the Ombudsman suffers from any of the defects identified herein above and (B) all other ingredients required to be satisfied to hold a petition maintainable for purposes of Article 199 exit.

17. In the instant case, the text of the compromise agreement dated 04.08.2020 makes it patent that the petitioner has himself admitted that the series of his actions that resulted in the initial complaint, the compromise agreement and the subsequent complaint before respondent No.1 were such that do not fall beyond the definition of "harassment" for purposes of the Act. The case reported as PLD 2018 SC 703, that the learned counsel for the petitioner relied upon, is thus distinguishable. Learned counsel for the petitioner has failed to identify any other defect in the assumption of jurisdiction by respondent no. 1 or in the orders passed in relation to the proceedings pending before the Ombudsman thus far, and consequently this court must not exercise its extraordinary constitutional jurisdiction in view of Section 18 of the 2013 Act.

18. In view of the above, instant petition is without any merit and is being **dismissed in limine** with cost of Rs.25,000/- to be paid to SOS Village and receipt thereof be submitted to the Deputy Registrar (Judicial) of this Court.

**(BABAR SATTAR)**  
**JUDGE**