

JUDGMENT SHEET.

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

W.P. No. 1778/2020.

Haji Adam

Versus

Federal Ombudsman for Protection against Harassment of Women at Workplace,
Islamabad, etc.

Petitioner by: Mr. Muhammad Shoaib Shaheen, Advocate
alongwith petitioner.

Respondents by: Hafiz Arfat Ahmed Ch. and Ms. Kashifa Niaz
Awan, Advocates for PEMRA.
Ms. Aaliya Zareen Abbasi and Syed Adil
Gardezi, Advocates alongwith complainant.

Date of Decision: 04.08.2020.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioner has called in question the order dated 04.02.2020, passed by Federal Ombudsman for Protection against Harassment of Women at Workplace, Islamabad/respondent No.1 and order dated 30.06.2020, passed by President's Secretariat (Public), Aiwan-e-Sadr, Islamabad/respondent No.2 and order dated 03.07.2020, passed by Chairman, PEMRA/respondent No.3, whereby suspension of the petitioner from his official position has been ordered.

2. Learned counsel for the petitioner contends that respondent No.4/Ms. Sidra Karim Awan has filed complaint against the petitioner U/S 3 of the Protection against Harassment of Women at Workplace Act, 2010 before the office of Chairman PEMRA, in response thereto, 7-Member Committee headed by Director General was constituted to investigate the matter strictly in accordance with the procedure provided in the Protection against Harassment of Women at Workplace Act, 2010; that respondent No.4 instead of waiting for the final outcome filed complaint before the Federal Ombudsman for Protection against Harassment of Women at Workplace, Islamabad/respondent No.1, whereby impugned order dated 04.02.2020 has been passed and suspended the

petitioner from his official position of DG (Admn) and DG (HR), PEMRA; that said order was assailed through representation by respondent No.3/PEMRA before respondent No.2 but the said representation was turned down after giving thorough hearing to the parties vide order dated 30.06.2020, which is the second impugned order before this Court; that during the pendency of complaint before 7-Member Committee of PEMRA, respondent No.4 could not approach respondent No.1, as such prior to completion of inquiry by 7-Member Committee of PEMRA, the impugned order dated 04.02.2020, passed by Federal Ombudsman for Protection against Harassment of Women at Workplace, Islamabad is not sustainable in the eyes of law, even respondent No.1 has no legal jurisdiction to pass suspension order of petitioner from his official position, which does not commensurate with the penalties provided in the Act and as such the order on the face of record is perverse, illegal and without jurisdiction; that Chairman, PEMRA has passed the order of suspension in the light of order of Federal Ombudsman which itself is illegal and petitioner has not been given due opportunity of hearing even principle of *Audi alteram partem* has been violated.

3. Conversely, learned counsel for respondent No.3/Chairman PEMRA contends that Committee has already been constituted by the PEMRA and matter is subjudice but respondent No.4 has simultaneously agitated the matter before respondent No.1, whereby impugned order dated 04.02.2020 was passed, even the said order was assailed through representation before respondent No.2, who has not adjudicated upon the matter in accordance with law and rejected the representation without recourse to legal provision; that order dated 03.07.2020, passed by Chairman, PEMRA is based upon the order of respondent No.1 dated 04.02.2020 so that no embarrassment should be caused to the department.

4. Learned counsel for respondent No.4 raised the question of maintainability of instant writ petition on the ground that initial order of suspension passed by respondent No.1 dated 04.02.2020 could not be assailed by

the petitioner under the law and as such no right exists in favour of petitioner who is not aggrieved with the initial order; that petitioner has filed review application before respondent No.1 for review of order dated 04.02.2020 and during the pendency of such application instant writ petition is not competent and is liable to be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that respondent No.4 has filed harassment complaint against the petitioner before the office of respondent No.3, without waiting for the outcome of a similar complaint before respondent No.1, whereby respondent No.1 while entertaining the complaint at pre-admission stage passed the following order:-

The allegations leveled by the complainant against the accused, Prima facie, fall within the definition and purview of section 2(h) of the Act, 2010. So in the interest of justice I deem it appropriate to proceed further with the matter while invoking the jurisdiction / authority vested in me under sub section 2 of section 8 of Protection against Harassment of Women at Workplace Act, 2010.

Accordingly written show cause notices be issued to accused within 3 days directing them to submit written defence within 5 days after receipt of the written notice.

Meanwhile, in order to safe guard the transparency in the matter, the charge of DG (Admn) and DG (HR) be taken away from the accused No.1 namely Mr. Haji Adam Khan suspending him till further orders, so that the other side may not nourish any doubt of hostile environment against her.

Surprisingly the petitioner has not agitated the matter through representation by way of alternate remedy rather PEMRA as institution/ department has assailed the same before respondent No.2, whereby after hearing the parties at length, representation was disposed of in the following manner:-

It needs to be observed that after the order was passed by the learned Ombudsman on 02.04.2020 suspending the accused till further orders, the organization quite fairly implemented the same by issuing Office Order dated 07.02.2020 suspending Haji Adam (the accused) with immediate

effect and until further orders and by withdrawing the charge of the posts of Director General (Admn) & Director General (HR) from him and entrusting the charge of post of Director General (HR) to Mr. Sardar Arfan Ashraf Khan and of the post of Director General (Admn) to Mr. Shamim Gull Durrani. However, it appears that while no further order had yet been passed by the learned Ombudsman, the organization of its own issued another Office Order dated 17.03.2020 withdrawing Office Order dated 07.02.2020 meaning thereby that suspension of the accused Haji Adam was set at naught. This was done while the Ombudsman is still seized of the matter and the order passed on 04.02.2020 is intact and has not yet been recalled. By issuing Office Order dated 17.03.2020, the organization prima-facie has run the risk of violating and defying the order of Ombudsman. Acting on a safer side it could have awaited the further order to be passed by the learned Ombudsman. However, this matter is left to be considered by the learned Ombudsman in accordance with law.

A grievance has been made that the matter is being unnecessarily lingered resulting in administrative complications for the organizations. To delay the proceedings is not of any use to any of the parties or their interest, however, if that be so, any of the party can apply for expeditious proceedings in the matter and decision in accordance with law.

In the background and circumstances, when the matter is still pending before the learned Ombudsman there is hardly any justification to interfere in the proceedings or with an ad-interim order passed by the learned Ombudsman. Accordingly, the Hon'ble President of Pakistan has been pleased to dispose of the representation with the observation that the learned Ombudsman would take up this matter as early as may be convenient to that forum and decide all such objections/issues after hearing the parties in accordance with law expeditiously.

7. The above mentioned order dated 30.06.2020 alongwith initial order dated 04.02.2020 have been assailed by the petitioner before this Court in constitutional jurisdiction primarily on the ground that respondent No.4 has already left the department/PEMRA and as such initial order dated 04.02.2020 has no effect on the working of the harassment committee if complaint of respondent No.4 was proceeded further. The petitioner has also contended that respondent No.1 has no jurisdiction to suspend the petitioner from his official position as no

adjudication has been made under the law, nor any opportunity was given to the petitioner.

8. While considering the entire background, when the petitioner has not challenged the order dated 04.02.2020 through representation in the President Secretariat in terms of Federal Ombudsman Institutional Reforms Act, 2013, initial order dated 04.02.2020 could not be assailed before this Court in constitutional jurisdiction as such it means that petitioner has bypassed his remedy provided under the law, even otherwise, PEMRA being organization has challenged the initial order with the President Secretariat who have no *locus-standi* to become an aggrieved person, even the petitioner is aggrieved with the order of President Secretariat dated 30.06.2020 but the above mentioned findings of President Secretariat clearly discloses that matter is at initial stage and any observation at this stage may effect the case of either party. The President Secretariat feels the sensitivity of the matter and avoided to pass any order and referred the matter to the Federal Ombudsman for decision in accordance with law.

9. Another aspect has been noted that, the petitioner has also filed review application against the initial order dated 04.02.2020 before the Federal Ombudsman, which makes the instant constitutional not maintainable as the alternate remedy has been availed, although the petitioner has taken a stance that he has filed application for withdrawal of the pending review application.

10. While considering all these legal and factual aspects, there is no cavil to the proposition that Federal Ombudsman can only pass the order provided under the law i.e. Section 10 of the Act, 2010, which deals with the powers of Ombudsman, which are as under:-

10. Powers of the Ombudsman.---- *The Ombudsman shall for the purpose of this Act have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:*

- i. Summoning and enforcing the attendance of any person and examining him on oath;*
 - ii. Compelling the production of evidence;*
 - iii. Receiving evidence on affidavits;*
 - iv. Issuing commission for the examination of witnesses;*
 - v. Entering any premises for the purpose of making any inspection or investigation, enter any premises where the Ombudsman has a reason to believe that any information relevant to the case may be found; and*
 - vi. The Ombudsman shall have the same powers as the High Court has to punish any person for its contempt.*
- (2) *Ombudsman shall while making the decision on the complaint may impose any of the minor or major penalties specified in sub-section (4) of section 4.*

11. The above mentioned provisions empowers the Ombudsman to impose any penalty specified in sub-section 4 of Section 4 of the Act but the said penalties can only be imposed after completion of entire process provided under the law in any pending complaint, whereby an opportunity of hearing is inalienable right of accused in such type of proceedings, even mandate of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 is the backbone of the entire legal system which provides the concept of fair trial including the right of hearing.

12. In the above mentioned facts and series of order, there is no cavil to the proposition that Federal Ombudsman for Protection against Harassment of Women at Workplace, Islamabad has no jurisdiction to directly pass an order of suspension against the official in terms of the powers conferred under the said Act, any such order is beyond the scope of Section 10 of the Act. However, recommendation may be given to the department concerned if circumstances so warrants, even then right to fair trial and due process is the minimum requirements, whereas in this case the petitioner was admittedly not present before the Federal Ombudsman at the time of passing of order dated 04.02.2020, even his written submissions were not placed on record and he was out of

country, all these facts have been recorded by the Federal Ombudsman in the order dated 04.02.2020. Similarly, respondent/victim was not in service on the said date.

13. On the other hand review application of petitioner is still pending with the learned Federal Ombudsman and it is not appropriate to pass any order during the pendency of review application. The stance taken by the petitioner and respondent No.4 require adjudication by the learned Ombudsman, even President Secretariat while hearing the representation has directed the Ombudsman to decide the same in accordance with law and in this situation judicial review in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 could not be made when the appellate authority has not observed anything on merits.

14. There is no denial to the proposition that exercise of constitutional jurisdiction was dependent upon the non-availability of alternate and efficacious remedy or existence of some extra ordinary circumstances and one could not be allowed to bypass or circumvent the alternate remedy in the normal course of the event. Reliance is placed upon PLD 2016 SC 55 (Muhammad Farooq Vs. Ahmed Nawaz Jigrani and others), hence, alternate remedies are in field, even Federal Ombudsman has yet to consider the legal and factual aspects of the case as well as the law in a proper manner, therefore, instant writ petition stands disposed of with direction to the Federal Ombudsman to give proper hearing to both the parties in accordance with law within period of 15 days and shall pass a speaking order while considering its legal authority as well as its jurisdiction. It is made clear that order of Ombudsman dated 04.02.2020 shall remain in field till the next order of the Ombudsman within 15 days, where-after interim order dated 04.02.2020 shall cease to exist automa

(MOHSIN AKHTAR KAYANI)
JUDGE