

Form No: HCJD/C.

**JUDGMENT SHEET.**

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

**Writ Petition No.2277 of 2016.**

***Syed Mazhar Hussain, etc.***

***Vs.***

***President of the Islamic Republic of Pakistan, etc.***

***Petitioner's by. Mr. Muhammad Ali Raza , Advocate.***

***Respondent's by. Mr. Zahid Sarwar Qadri & Ch.***  
***Muhammad Asad Raan, Advocates &***  
***Raja Khalid Mehmood Khan, learned***  
***DAG.***

***Date of Decision. 02.11.2017.***

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**AAMER FAROOQ, J.-** The facts leading to file of the instant petition are that respondent No. 4 was an employee at Pakistan Telecommunication Corporation Limited. She was hired by the referred organization on 07.01.2013 as Senior Manager and was subsequently transferred from the President's office to Customer Care Department in Rawalpindi vide order dated 23.06.2014; her contract with PTCL was terminated on 23.07.2015. Respondent No.4 while in service lodged a complaint with PTCL management through email alleging that she was mentally tortured by petitioner No.3. Taking notice of the complaint she was responded vide email dated 28.05.2015 that the matter shall be dealt with and investigated. On 29.05.2015 again a complaint was made by respondent No. 4 that the referred petitioner has aggressive

behavior towards her. A fact finding committee was constituted to probe into the matter which submitted its report accordingly. After her termination respondent No.4 on 30.07.2015 filed a complaint with respondent No.3 leveling allegations of sexual harassment against petitioner No.3 and accusing others as accomplice. Respondent No. 3 vide order dated 14.01.2016 dismissed the complaint on the ground that respondent No.4 filed the complaint as retaliation to her removal from service and observed that the referred respondent did not have jurisdiction in the matter. Respondent No.4 filed representation before respondent No.1 which was allowed vide the impugned order dated 30.05.2016, whereby, the matter was remanded to respondent No.3 for decision a fresh on merits after providing opportunity of hearing to the parties.

2. Learned counsel for the petitioners, interalia, contended that Protection Against Harassment of Women at Workplace Act, 2010 (The Act) was promulgated and is applicable only to the employees who are still in employment of an organization; that the Act is not applicable to the Ex-employees of the organization. In order to support his contention learned counsel placed reliance on sections 2(a) and 2(f) of the Act as well as section 4(3)(e) of the same. It was further contended that one of the relief claimed by respondent No.4 in her complaint before respondent No.3 was reinstatement in service which is not within the domain of respondent No.3 as is borne out from section 4(4) of the Act; that if the respondent No.4 is aggrieved of wrongful termination of her contract of employment she may prefer a claim for compensation before the courts of plenary jurisdiction. In support of his contention learned counsel placed reliance on cases reported as ***"Aurangzeb v. Messrs Gool Bano and others"*** (2001 SCMR 909), ***"Yar Muhammad v. Secretary, Finance Department and others"*** (2011 SCMR 1537), ***"Tilat Hussain***

***v. Chairman, PIA and others***” (2002 PLC (C.S) 1), ***“ABN AMRO Bank v. Wasim Dar”*** (2004 PLC 69).

3. Learned Deputy Attorney General on behalf of respondent No.1 as well as learned counsel for the respondent No.4, inter alia, contended that the instant petition is not maintainable inasmuch as it assails order passed by respondent No.1, whereby, the matter has been remanded and not finally adjudicated. Reliance was placed on cases reported as ***“Mst. Salim Un Nisa and 5 others v. Aziz and another”*** (2009 CLC 860), ***“Ali Anwar v. Government of Sindh”*** (2012 YLR 183) and ***“Abdul Majeed v. Noor Muhammad”*** (PLD 2006 Lahore 649). It was further contended that under the provisions of Federal Ombudsman Institutional Reforms Act, 2013 there is a bar of jurisdiction from scrutinizing any order passed by Ombudsman and that the provisions of the Act carry an overriding effect. It was further contended that even an ex-employee can agitate the complaint before respondent No.3.

4. The facts leading to file of the instant petition have been mentioned with brevity here in above, therefore, need not be reproduced. The learned Deputy Attorney General as well as learned counsel for respondent No.4 has objected to the maintainability of the petition on the ground that the order impugned in the instant petition is not final and is a remand order. In this behalf respondent No.3 dismissed the complaint filed by the respondent No.4 on the basis that it did not have jurisdiction in the matter under the Act. Representation filed by respondent No.4 against the said order was allowed by respondent No.1 and the matter was remanded for decision afresh on merits. In so far as question of jurisdiction is concerned the matter stands finally adjudicated inasmuch as respondent No.1 in the impugned order

has directed respondent No.3 not to be influenced by observations made in earlier order.

6. 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.

7. In this view of the matter since the question raised in the instant petition is solely about the jurisdiction of respondent No.3 to entertain a complaint vis-à-vis an Ex-employee, hence, the question can be examined by this court in exercise of its jurisdiction under Article 199 of the Constitution. Therefore, the objection by respondents regarding the maintainability of the petition is not tenable.

8. Under section 8 of the Act any employee has the option to prefer a complaint either to the Ombudsman or the inquiry committee regarding the sexual harassment at workplace. In this behalf the definition of employee is provided in section 2(f) *ibid* which read as follows:-

"Employee means a regular or contractual employee whether employed on daily, weekly, monthly or hourly basis and includes an intern or an apprentice".

9. Under section 4(3)(e) it is provided that the inquiry Committee is to ensure that the employer or accused shall in no

case create any hostile environment for the complainant so as to pressurize her from freely pursuing her complaint.

10. The bare perusal of the above provisions show that the intention of the legislature was that only an employee who is in employment of an employer can prefer claim of sexual harassment either before the inquiry Committee or the Ombudsman i.e respondent No.3. There is nothing in the Act which lays down to the contrary i.e. provides the remedy of complaint to an ex-employee in case of sexual harassment.

11. The said fact is also borne out by bare perusal of the preamble of the Act which provides as follows:-

“And whereas, it is expedient to make this provision for the protection of women from harassment at the workplace”.

12. If the intention of the legislature was otherwise i.e. to include ex-employees then the same would have been clear from the language used however, by using all the tools of interpretation the wordings of statute cannot be stretched so as to include ex-employee for filing a complaint of sexual harassment before respondent No.3.

13. Learned Deputy Attorney General as well as learned counsel for the respondent No.4 raised an objection that under section 18 of Federal Ombudsman Institutional Reforms Act 2013, there is a bar of jurisdiction and this court can not in exercise of powers under Article 199 of the Constitution scrutinize the decisions rendered by Ombudsman . I am afraid this objection does not hold the field in light of clear law on the subject that where order passed is without jurisdiction or is contrary to law the decisions rendered are susceptible to judicial scrutiny under Article 199 of the Constitution even if the statute concern provides bar of jurisdiction.

14. For the forgoing reasons, the instant petition is allowed the impugned order dated 30.05.2016 passed by respondent No.1 is set aside; consequently the order passed by respondent No.3 is upheld and as result whereof the complaint filed by respondent No.4 stands dismissed.

(AAMER FAROOQ)  
JUDGE

*\*Shakeel Afzal\**

*Approved For Reporting*