

**JUDGMENT SHEET.**

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

**Writ Petition No. 2888 of 2018**

Government of the Punjab through Secretary, Planning and Development Department,  
Civil Secretariat, Lahore and 3 others

**Versus**

Federal Ombudsperson for Protection against Harassment of Women at Work Place,  
Islamabad and 2 others

Petitioners By : Ch. Saleem Murtaza Mughal, Assistant  
Advocate General Punjab

Respondents By : Syed Iqbal Jaffri, Advocate

Date of hearing : 17.10.2018

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**AAMER FAROOQ, J. -** The facts, leading to the filing of the instant petition as mentioned in the instant petition, are that respondent No.2 was appointed on contract vide letter dated 18.07.2017 as Project Director, Multi Sectoral Nutrition Centre, a project under the administrative control of Planning & Development, Government of the Punjab. The referred contract was for a period of one year and could be terminated either on one month's notice or salary in lieu of the notice by either side. The petitioner department dispensed with the service of respondent No.2 on account of the fact that several complaints were lodged by his colleagues. After his termination by the department, respondent No.2 approached the Ombudsperson for Punjab by way of a complaint under section 8 of the Protection Against Harassment of Women at Workplace Act, 2010. The referred application was withdrawn on 04.01.2017. Subsequently, another complaint was filed before respondent No.1, in which the

petitioners objected to the jurisdiction of respondent No.1 by way of application under order VII Rule 11 C.P.C. The said application was dismissed vide order dated 25.05.2018, hence the instant petition.

2. Learned Assistant Advocate General, Punjab, *inter alia*, contended that respondent No.1 has no jurisdiction in the matter inasmuch as the respondents in the complaint i.e. the petitioners are provincial departments and/or officers in service of Government of Punjab, hence jurisdiction vests with the Provincial Ombudsperson. In this behalf, it was contended that initially the Protection Against Harassment of Women at Workplace Act, 2010 was enacted and it had application to the whole of Pakistan. Subsequently, after Eighteenth Amendment in the Constitution, the subject became Provincial and as a result thereof, amendment was made by the provincial legislature through The Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act 2012, whereby a number of amendments were made in the Act of 2010. It was further contended that the matter has been considered and discussed in detail by the Hon'ble Lahore High Court in a case reported as *Salim Javed Baig and others versus Federal Ombudsman and others (PLD 2016 Lahore 433)*. Reliance was also placed on a recent judgment by the Division Bench of Lahore High Court titled *"Imran Maqbool, President, MCB Bank Limited versus Federation of Pakistan through Secretary Law, Justice and Human Rights Division, Islamabad, etc."* (W.P. No. 71556 of 2017).

3. Learned counsel for respondent No.2, *inter alia*, contended that the instant petition has not been properly filed inasmuch as no 'Wakalat Nama' is appended in favour of the Assistant Advocate General; that there is no presence on behalf of respondent No.1; that the instant petition is deliberately filed in this Court to put respondent No.2 and his counsel to inconvenience, hence they are entitled to recover special costs. It was further submitted that the issue

regarding Eighteen Amendment and its effect on the legislation in question i.e. Protection Against Harassment of Women at Workplace Act, 2010, is sub-judice before the Hon'ble Supreme Court of Pakistan, hence a reference should be made in this regard to the august Apex Court. Learned counsel further contended that decisions by the Hon'ble Lahore High Court are distinguishable. It was also submitted that decision of the Hon'ble Lahore High Court is not binding on this Court. It was also contended that the petitioners have concealed the relevant facts; that the service was not effected on respondent No.2 and he appeared voluntarily; that respondent No.2 is his son.

4. Arguments advanced by the learned counsels for the parties have been heard and the documents placed on record examined with their able assistance.

5. In a complaint, filed by respondent No.2, an application was filed by the Petitioners, which was dismissed vide the impugned order dated 25.05.2018. Before embarking upon the consideration of the order impugned in the instant petition, it is just and proper that the relevant law be discussed. Office of Ombudsman was created under the Protection Against Harassment of Women at the Workplace Act, 2010. In this behalf, Section 7 of the referred Act provides that respective Governments shall appoint an Ombudsman at the Federal and Provincial levels. Under Section 3 of the Act, every organization has to constitute an Inquiry Committee within thirty days of the commencement of this Act to enquire into the complaints under the same. In Section 2 *ibid*, "Complainant" means a woman or man who has made a complaint to the Ombudsperson or to the Inquiry Committee on being aggrieved by an act of harassment; likewise, "Employee" means a regular or contractual employee whether employed on daily, weekly, monthly or hourly basis, and includes an intern or an apprentice. Similarly, under Section 2(g) an "Employer" in relation to an organization, means

any person or body of persons whether incorporated or not, who or which employs workers in an organization under a contract of employment or in any other manner whosoever and includes the authority, in relation of an organization or a group of organizations run by or under the authority of any Ministry or department of the Federal Government or a Provincial Government, appointed in this behalf or, where no authority is appointed, the head of the Ministry or department as the case may be. Under the scheme of facts, where any employee is aggrieved of an act of harassment, he/ she can file a complaint before the Inquiry Committee constituted under the Act which can proceed with the same. The Inquiry Committee, under sub-Section 4 of Section 4, can either impose minor penalties or major penalties, which are enumerated in the referred Section. Any party aggrieved of the decision of the Inquiry Committee can file an appeal before the Ombudsman under Section 6 of the 2010 Act, however, the Ombudsman also has power/ jurisdiction to entertain a complaint directly filed by the complainant/ employee under Section 8 of the Act.

6. Examination of Section 7 of the Act shows that territorial jurisdiction of the office Ombudsperson was created by way of establishment/ appointment of Ombudsperson in the Provinces as well as Federation/ Islamabad Capital Territory. After 18<sup>th</sup> Amendment in the Constitution of Pakistan, a number of subjects devolved upon the Provinces and in the referred backdrop the concurrent list was done away with. In the Province of Punjab, amendments were made in Protection Against Harassment of Women at Workplace Act, 2010, through Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012, which was published in the Gazette of Punjab, Extraordinary on 05.01.2013. By virtue of the amendments, it was provided that Act of 2010 extends to whole of the Punjab. Likewise, amendments were made in the procedure as well as other aspects to factor the Act of 2010 for application in Province of Punjab.

7. The upshot of the above facts and circumstances is that initially there was an institution of Ombudsman created under Protection Against Harassment of Women at the Workplace Act, 2010 and the said Act extended to whole of Pakistan and the office of Ombudsman was created and the Ombudsperson/ Ombudsman were to be appointed in Provinces as well as Federal Levels, however, after the 18<sup>th</sup> amendment in the Constitution the Province of Punjab made amendments in the Act, 2010 and the office of Ombudsman was created solely for the Province of Punjab for redressal of the grievance of persons/ employees, who have been harassed at the workplace; consequently, the Ombudsman continue to work at Federal level, while office of Ombudsman also works at the level of Province of Punjab but under different law. The position of office of the Ombudsman after the Eighteenth Amendment was examined by the Lahore High Court in case reported as "*Salim Javed Baig and others Vs. Federal Ombudsman and others*" (**PLD 2016 Lahore 433**). The Hon'ble Lahore High Court in the referred judgment opined as under:-

9. *The Federal Act was promulgated on 11.03.2010 with jurisdiction extending to the whole of Pakistan under section 1(2) of the Federal Act. Constitution (Eighteenth Amendment) Act, 2010 was introduced on 20.04.2010. The said amendment omitted the Concurrent List from the Fourth Schedule to the Constitution, thereby enlarging and expanding the legislative domain of the provincial legislature and more importantly reinvigorating the constitutional theme of federalism and provincial autonomy. The preamble to the Amendment Act echoes the promise to establish "a Federal..... State wherein..... the Provinces have equitable share in the Federation." Admittedly, the Federal Act drew its legislative competence from entry 25 i.e., social welfare, of the erstwhile Concurrent List. Post 18th amendment, this area stands devolved onto the Provinces. Under Article 270AA(6) of the*

*Constitution, the Federal Act remains in force (as a Provincial Act, as discussed later) irrespective of the omission of the Concurrent List until such time that the Federal Act is altered, repealed or amended by the Competent Authority (legislature). Any such alteration or amendment in the law by the competent legislature does not affect its continuity and the law continues to be in force, albeit, as a provincial law, not because of the alteration or amendment but because of the constitutional declaration under the 18th amendment. It is only on repeal that the law comes to an end.*

*10. The Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012 (Act III 2013) has amended and altered the Federal Act (interestingly retaining the same title). It is actually the constitutional declaration of devolution, the underlying constitutional theme of federalism and provincial autonomy under the 18th Amendment which has metamorphosed the Federal Act into a Provincial Act. Alteration and amendment by the competent provincial legislature is a legislative exercise to align the law according to the wishes of the provincial legislature and has no bearing on the character of the law which already stands transformed into provincial law by the constitutional declaration on the promulgation of the Amendment Act.*

*11. Considering it from another angle, if the federal law under Article 270AA (6) can only be subjected to alteration, amendment and repeal by the provincial legislature, it means that the Federal law has lost its federal character and stands transformed into a Provincial law. What if the appropriate legislature does not carry out any amendment or alteration in the federal law, it still automatically stands converted into provincial law and remains in*

*force as such. This is also because with the omission of the Concurrent List, the federal legislature loses its legislative fiat and command over the areas in the Concurrent List to the provincial legislature and as a consequence the federal law is deprived of its federal character. It is important to underline, that with the legislative shift from federal to provincial, the executive authority under Article 97 also gets realigned and changes hands from federal executive to the provincial executive.*

12. *The Amendment Act, as well as, The Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012 constitutionally trims the Federal Act and restricts its jurisdiction to territories of Pakistan that fall outside the Provinces in terms of Article 1(2) of the Constitution. The continuance of the Federal Act in federal areas finds support under Article 142(d) of the Constitution that provides that the Federal Legislature has the exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province. The territorial jurisdiction of the Federal Act under section 1(2) extends to the whole of Pakistan. This geographical extent has to be pruned according to the constitutional mandate under the 18th amendment. The best interpretational tool to apply is that of reading down. Reliance is placed on Messrs Chenone Stores Ltd. Through Executive Director (Finance Accounts) v. Federal Board of Revenue through Chairman and 2 others (2012 PTD 1815) and Nadeem Asghar Nadeem and others v. Province of the Punjab and others (2015 CLC 1509). Therefore, in order to align the Federal Act with the constitutional scheme, section 1(2) of the Federal Act is read down thereby limiting the extent of the Federal Act to areas which do not form part of any province. Reliance is also placed on Syed Imran Ali*

***Shah v. Government of Pakistan and 2 others (2013 PLC 143).***

***13. The complaint filed by respondent No.2 on 14-9-2015 is based on cause of action arising in Lahore, the alleged accused also reside in Lahore, therefore, the jurisdiction to entertain and hear the complaint of respondent No.2 is with the Provincial Ombudsperson under the Provincial Act and the Federal Ombudsman has no jurisdiction to entertain the said complaint. The impugned Judgment dated 04.01.2016 passed by the Federal Ombudsman along with all the prior orders assuming jurisdiction in the matter are hereby declared to be unconstitutional, illegal and without lawful authority and, therefore, set aside. The complaint shall be deemed to have been returned to respondent No.2, who may file the same before the Provincial Ombudsperson, if so advised. Considering that the Federal Ombudsman had no jurisdiction to entertain the complaint, other grounds agitated by the petitioners need not be gone into.”***

This Court was informed that the referred decision of the Hon’ble Lahore High Court, Lahore is under challenge before the august Apex Court and the matter is pending adjudication. Meanwhile, the similar issue also came up for consideration before the Hon’ble Division Bench of Lahore High Court in case titled “Imran Maqbool V/s Federation of Pakistan, etc.” (Writ Petition No.71556 of 2017). The Hon’ble Division Bench after revisiting the Act of 2010 and the amendments made therein by the Province of Punjab in 2013 did not agree with the decision in “*Salim Javed Baig and others Vs. Federal Ombudsman and others*” supra and concluded as follows:-

***“Under the circumstances, we hold that if the employer or organization and its workplace falls strictly within the territorial boundaries of the Provincial Ombudsman, then jurisdiction vests with***



*the Provincial Ombudsman and where the employer or organization transcends provincial boundaries such as in this case then jurisdiction vests with the Federal Ombudsman.”*

8. Now coming to the impugned decision, Respondent No.1 disallowed the objection of the Petitioners regarding jurisdiction. The learned Ombudsperson lucidly discussed the law on subject and rendered its conclusion in para 11 of the impugned order in the following manner:-

*“11. The argument that post 18th Amendment, the issue of harassment at workplace stands devolved onto the provinces because the Act of 2010 drew its legislative competence from entry 25 i.e. social welfare of concurrent list does not hold force. The subject of social welfare pertains to distribution of wealth providing opportunities and privileges within the society to needy persons for their economic development. A Social Welfare Department already exists within the Government of Punjab. The subject matter of the Act of 2010 is a fundamental right under the Constitution of Pakistan 1973 as the preamble of the Act of 2010 states, inter alia, “Whereas the Constitution of Islamic Republic of Pakistan recognizes the fundamental right of citizens to dignity of person.” Both federal and provincial government are under a duty to protect fundamental rights.”*

9. It is observed that Respondent No.1 while concluding that the issue is one of a fundamental right, hence, could be agitated before the Ombudsman in the Act of 2010, committed error of law and the said decision/ conclusion is not tenable.

10. As noted above, even prior to Eighteenth Amendment, the scheme of law was that there was not to be one Ombudsman having jurisdiction all over

Pakistan but the Ombudsperson were to be appointed at Provincial and Federal Levels, meaning thereby, that territorial jurisdiction/ authority was created vis-à-vis each Province and Federation. After the 18<sup>th</sup> Amendment in the Constitution of Pakistan, Province of Punjab made changes in the Act of 2010 and office of Ombudsman for the Province of Punjab exclusively was created, so ties from the original Act of 2010 were severed. In the amending Act of 2013, Section 7 of the Act, 2010 was replaced/ substituted, meaning thereby that now the Ombudsman for the Province of Punjab is not to be appointed under the 2010 Act but under the Act of 2013.

11. The Petitioners before this Court are Respondents in the complaint filed by Respondent No.2. Petitioners the Government of Punjab and/or its departments including the persons working therein. The Petitioners are not trans-provincial organization(s) but are exclusively situated/ based in the Province of Punjab. It is pertinent to observe that the Petitioners do not have any office and even nexus with the Federation.

12. In the referred facts and circumstances, this Court tends to agree with the decision of the Hon'ble Division Bench of Lahore High Court in Writ Petition No.71556/2017 supra that the matter regarding jurisdiction of Ombudsperson is to be reconsidered on the basis of territorial jurisdiction. In case of trans-provincial organizations the Ombudsman under the Act of 2010 has the jurisdiction. Likewise, the organizations/ departments, which are controlled by the Federal Government, the Ombudsman under the Act of 2010, the jurisdiction in the matter. However, the departments/ organizations/ ministries working under the Government of Punjab do not fall within the jurisdiction of the office of Ombudsman working under the Act of 2010.

13. Learned counsel for Respondent No.2 objected to the Petitioners filing the instant petition before this Court. Since the office of Respondent No.1 is

situated in Islamabad Capital Territory, which falls within the territorial jurisdiction of this Court, hence, this petition is maintainable in this Court.

14. Learned counsel for Respondent No.2 objected to the competency of learned Assistant Advocate General to file the instant petition. Under Rule 2 of Order XXVII of Code of Civil Procedure, 1908 persons being ex-officio or otherwise authorized to act for the Government in respect of any judicial proceeding are deemed to be the recognized agents by whom appearances, acts and applications under the Code of Procedure may be made or done by the Government. Reliance placed on "*Province of Punjab and another Vs. Messrs Industrial Machine Pool*" (**PLD 1978 Lahore 829**) and "*Messrs Nabi Bakhsh & Sons Vs. Pakistan, through Secretary, Ministry of Industries and Natural Resources*" (**PLD 1969 Karachi 566**). Even otherwise, office order dated 13.10.2018, No1780, Addl.A.G/HC/RWP, Government of Punjab, Office of Advocate General Punjab, Rawalpindi, Ch. Saleem Murtaza Mughal, Assistant Advocate General is authorized to appear before all the benches of this Court. For ease of convenience, Roster is reproduced below:-

No.1780 ADDL.A.G./HC/RWP  
GOVERNMENT OF THE PUNJAB  
O/O ADVOCATE-GENERAL PUNJAB,  
RAWALPINDI.

Dated: 13.10.2018

**ROSTER OF LAW OFFICERS**  
**FROM 15.10.2018 TO 19.10.2018**

S.No.	Court's Name	Name of Law Officer
<b><u>DIVISION BENCHES</u></b>		
<b><u>DB-I</u></b>	Mr. Justice Ibad Ur Rehman Lodhi	Mr. Shahid Mehmood Abbasi      Addl.AG
	Mr. Justice Shahid Mubeen	Mr. Ahmed Hassan Rana      AAG
<b><u>DB-II</u></b>	Mr. Justice Muhammad Tariq Abbasi	Syed Raza Abbas Naqvi      AAG
	Mr. Justice Mirza Viqas Rauf	Ch. Saleem Murtaza Mughal      AAG
<b><u>SINGLE BENCHES</u></b>		
1.	Mr. Justice Ibad Ur Rehman Lodhi	Mr. Shafqat Munir Malik      Addl.AG Mr. Ahmed Hassan Rana      AAG
2.	Mr. Justice Muhammad Tariq Abbasi	Mr. Saif ur Rehman      AAG
3.	Mr. Justice Mirza Viqas Rauf	Mr. Nadeem Akhtar Bhati      AAG

4.	Mr. Justice Shahid Mubeen	Mr. Khurshid Ahmed Satti	AAG
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**ISLAMABAD HIGH COURT**

1.	Hon’ble Chief Justice Mr. Justice Muhammad Anwar Khan Kasi	Ch. Saleem Murtaza Mughal	AAG
2.	Mr. Justice Athat Minallah		
3.	Mr. Justice Aamer Farooq		
4.	Mr. Justice Mohsin Akhtar Kayani		
5.	Mr. Justice Miangul Hassan Aurangzeb		

In view of above, the instant petition has been filed and pleaded competently.

15. Learned Counsel for Respondent No.2 also requested for award of special costs for putting him and his client to inconvenience by not filing the instant petition at Lahore. Since, as it is noted above that this Court has jurisdiction in the matter, hence, the referred plea on behalf of Respondent No.2 has no merit.

16. In view of the foregoing, the instant petition is allowed and the impugned order dated 25.05.2018 is set-aside; consequently, the application filed by the Petitioners challenging the jurisdiction of Respondent No.1 is allowed and it is declared that Respondent No.1 has no jurisdiction in the matter. However, Respondent No.2 may agitate the matter before the competent forum.

**(AAMER FAROOQ)**  
**JUDGE**

**Announced in Open Court on 26/11/2018.**

**JUDGE**

*\*M. Zaheer Janjua\**