

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.3900 of 2020  
Imran Amir and another  
**Versus**  
Ismat Bibi and another

**Date of Hearing:** 10.03.2022  
**Petitioners by:** Mr. Tufail Shahzad, Advocate  
**Respondent No.1 by:** Mr. Muhammad Sadiq Khan, Advocate

---

**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioners impugn the interim order dated 30.09.2020 passed by the Ombudsman for Protection against Harassment of Women at the Workplace (“the Ombudsman”), dismissing the petitioners’ application praying for dismissal of the complaint bearing No.FOH-HQR/0000151/19 filed by respondent No.1 (Ms. Ismat Bibi) against the petitioners under the provisions of the Protection against Harassment of Women at the Workplace Act, 2010 (“the 2010 Act”).

2. The record shows that on 28.03.2019, respondent No.1, who was a Teacher at Public Collegiate Secondary School, Akora Khattak, had filed a complaint under Section 8(1) of the 2010 Act, wherein it was alleged that petitioner No.1 (Imran Aamir) had committed “*harassment*” as defined in Section 2(h) of the 2010 Act, and that petitioner No.2 (as the Head Principal of the school where respondent No.1 was serving as the teacher) instead of taking action against petitioner No.1 threatened respondent No.1 and expelled her from the school.

3. During the pendency of proceedings before the Ombudsman, the petitioners filed an application for the rejection of respondent No.1’s complaint. Vide order dated 30.09.2020, the said application was dismissed. The said order has been assailed by the petitioners in the instant writ petition.

4. Learned counsel for the petitioners submitted that on the complaint of respondent No.1, FIR No.78 was lodged against petitioner No.1 on 08.02.2019 under Sections 376, 511 and 509 of the Pakistan Penal Code, 1860 (“PPC”) at Police Station Akora Khattak, District

Nowshehra; that a day after the said FIR, petitioner No.1 was arrested; that vide order dated 15.03.2019, petitioner No.1 was granted post-arrest bail by the Hon'ble Peshawar High Court; that the trial pursuant to the said FIR is still pending before the Court of the learned Additional Sessions Judge-I, Nowshehra; that the allegations against petitioner No.1 in the said FIR are the same as the allegations levelled by respondent No.1 in her complaint before the Ombudsman; that the petitioners would be subjected to double jeopardy if the proceedings before the Ombudsman are permitted to continue given the fact that the criminal trial against the petitioners is also proceedings before a Criminal Court; and that the proceedings before the Ombudsman are violation of petitioner No.1's fundamental rights under Article 13 of the Constitution. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

5. On the other hand, learned counsel for respondent No.1 submitted that the petitioners are trying to protract the proceedings before the Ombudsman; that the mere fact that a criminal case is pending against the petitioners would not cause the proceedings against them under the provisions of the 2010 Act to be quashed; that earlier a similar application filed by the petitioners had been dismissed by the Ombudsman; and that it is clearly mentioned in the impugned order that the dismissal of the earlier application had not been assailed by the petitioners. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

6. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

7. The vital question that needs to be answered is whether the petitioners' fundamental rights under Article 13 of the Constitution are being transgressed due to the pendency of the proceedings before the Ombudsman pursuant to a complaint filed by respondent No.1 against the petitioners under the provisions of the 2010 Act. True, respondent No.1 had lodged FIR No.78 against petitioner No.1 on 08.02.2019 under Sections 376, 511 and 509 PPC at Police Station Akora Khattak, District Nowshehra. Petitioner No.1 was arrested the same day the said FIR

was lodged. His post-arrest bail petition was dismissed by the learned trial Court. Vide judgment dated 15.03.2019, petitioner No.1 was granted post-arrest bail by the Hon'ble Peshawar High Court.

8. After petitioner No.1 was released on bail, respondent No.1 on 28.03.2019 filed a complaint against the petitioners before the Ombudsman under the provisions of the 2010 Act. The petitioners' application for the dismissal of respondent No.1's complaint was dismissed by the Ombudsman vide impugned order dated 30.09.2020.

9. The object behind the enactment of the 2010 Act is to protect a woman from being harassed (as defined in Section 2(h) of the 2010 Act) at the workplace. The inquiry proceedings conducted by the Ombudsman pursuant to a complaint filed by an employee under Section 8(1) of the 2010 Act are not criminal proceedings. Section 8(3) of the said Act provides that the Ombudsman shall conduct an inquiry into the matter according to the rules made under the said Act and conduct proceedings as the Ombudsman deems proper. Under Section 10(2) of the 2010 Act, the Ombudsman, while making a decision on a complaint, can impose any of the minor or major penalties specified in Section 4(4) of the said Act. The minor and major penalties listed in Section 4(4) of the said Act are herein below:-

***“(i) Minor penalties:***

- (a) censure;***
- (b) withholding, for a specific period, promotion or increment;***
- (c) stoppage, for a specific period, at an efficiency bar in the time-scale, otherwise than for unfitness to cross such bar; and***
- (d) recovery of the compensation payable to the complainant from pay or any other source of the accused.***

***(ii) Major penalties:***

- (a) reduction to a lower post or time-scale, or to a lower stage in a time-scale;***
- (b) compulsory retirement;***
- (c) removal from service;***
- (d) dismissal from service; and***
- (e) Fine. A part of the fine can be used as compensation for the complainant. In case of the owner, the fine shall be payable to the complainant.”***

10. In the event the charge against petitioner No.1 is proved in the trial pending before the learned Additional Sessions Judge-I, Nowshehra, the Trial Court can convict petitioner No.1 for offences

under Section 376 PPC (which *inter alia* carries a sentence not less than ten years or more than twenty five years); under Section 509 PPC (which *inter alia* carries a sentence which may extend to three years); and under Section 511 PPC (which carries the quantum of sentence dependent on the offence he is proved to have attempted to commit). The sentences that the said Criminal Court can award to petitioner No.1 are dissimilar to the minor or major penalties that the Ombudsman can impose on the petitioners if the allegations made by respondent No.1 against them are established. Moreover, Section 12 of the 2010 Act makes it clear that the provisions of the said Act shall be “*in addition to*” and not in derogation of any other law for the time being in force.

11. It is by now well settled that where an act or omission constitutes a criminal offence as well as a civil wrong, the mere fact that an accused has been acquitted from a criminal charge does not *ipso facto* mean that he stands absolved from civil liability. The Superior Courts have enunciated time and again that criminal and departmental proceedings against an employee can go side by side and may even end in varying results. Departmental and criminal proceedings could be taken simultaneously and are independent of each other. Acquittal in a criminal case would not constitute a bar for the initiation of the disciplinary proceedings. Criminal proceedings and departmental proceedings against a civil servant are entirely different as one relates to the enforcement of criminal liability and the other is concerned with service discipline. There is a catena of case law in support of this, including the following judgments:-

- “i) *Amir Abdullah Vs. Superintendent of Police (1989 SCMR 333)*
- ii) *Deputy Inspector General of Police Vs. Anisur Rehman (PLD 1985 SC 134)*
- iii) *Muhammad Ayub Vs. Chairman Electricity Board WAPDA, Peshawar (PLD 1987 SC 195)*
- iv) *Talib Hussain Vs. Anar Gul Khan (1993 SCMR 2177)*
- v) *Rashid Mehmood Vs. Additional Inspector-General of Police (2002 SCMR 57)*

- vi) *Khalid Dad Vs. Inspector General of Police (2004 SCMR 192)*
- vii) *Syed Muhammad Iqbal Jafri Vs. Registrar Lahore High Court, Lahore (2004 SCMR 540)*
- viii) *Muhammad Shafique Vs. Deputy Director Food (2005 SCMR 1067)*
- ix) *Syed Aqleem Abbasi Jaffari Vs. Province of Punjab through Secretary, Irrigation Department (2005 SCMR 1901)*
- x) *Falak Sher Vs. Inspector-General of Police, Lahore (2005 SCMR 1020)*
- xi) *Sami Ullah Vs. Inspector-General of Police (2006 SCMR 554)*
- xii) *Asif Mehmood Butt Vs. Regional CEO, NBP (2011 PLC (C.S.) 1462)."*

12. There is no legal bar on the institution of civil proceedings on a cause which is also the subject matter of criminal proceedings because not only the object of proceedings is different but also the standard and onus of proof is different in the civil and criminal proceedings. In holding so, I derive guidance from the law laid down in the case of Seema Fareed Vs. State (2008 SCMR 839), wherein the Hon'ble Supreme Court observed as follows:-

*"It is well-settled that a criminal case must be allowed to proceed on its own merits and merely because civil proceedings relating to same transaction have been instituted it has never been considered to be a legal bar to the maintainability of criminal proceedings which can proceed concurrently because conviction for a criminal offence is altogether a different matter from the civil liability. While the spirit and purpose of criminal proceedings is to punish the offender for the commission of a crime the purpose behind the civil proceedings is to enforce civil rights arising out of contracts and in law both the proceedings can co-exist and proceed with simultaneously without any legal restriction."*

13. Since I do not find the petitioners to have been subjected to double jeopardy by the continuation of the proceedings before the Ombudsman under the 2010 Act during the pendency of the criminal trial against petitioner No.1, the instant petition is dismissed with costs.

14. Learned counsel for respondent No.1 has brought on record order dated 31.01.2020 passed by the Ombudsman, whereby the

petitioners' earlier application for the dismissal of the complaint filed against them by respondent No.1 was dismissed. Perusal of the said order shows that the ground taken by the petitioners in their application for the dismissal of respondent No.1's complaint was that a criminal complaint had been registered against the petitioners, and that further proceedings in the complaint filed before the Ombudsman would amount to a violation of the petitioners' fundamental rights under Article 13 of the Constitution. Despite the dismissal of the petitioners' earlier application vide Ombudsman's order dated 31.01.2020, the petitioners filed another application seeking the dismissal of the complaint on the very same ground taken by them in their earlier application. The petitioners have not made a disclosure as to the dismissal of their earlier application in the memo of the petition. For this inequitable conduct of the petitioners, I deem it appropriate to impose additional costs of Rs.50,000/- on each of the petitioners under Section 35(1)(iii) of the Code of Civil Procedure, 1908 as amended by the Costs of Litigation Act, 2017. These costs shall be paid to respondent No.1 within a period of two weeks before the Ombudsman.

15. Office is directed to transmit a copy of this order to the Ombudsman so that the proceedings pursuant to complaint No.FOH-HQR/0000151/19 are resumed.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON 17/03/2022**

**(JUDGE)**

*Qamar Khan\**

**APPROVED FOR REPORTING**