

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.1782/2018

Nadia Batool Hussain

Versus

Federal Ombudsperson for Protection against Harassment of Women
at Workplace & 10 others

Petitioners by : Mr Umer Ijaz Gillani, Advocate.
Mr Rizwan Shabbir Kiyani, Advocate.
Barrister Suhail Nawaz, Advocate.

Respondents by : Syed Muhammad Tayyab, Dy. Attorney General.
Mr Asad Ladha, Advocate.
Malik Ghulam Sabir, Advocate.
Raja Abdul Qadeer Janjua, Advocate.
Mr Adeel Wahid, Advocate.
Malik M. Faiz Kaudhwal, Advocate.
Qazi Jawad Aman Ullah, Advocate.

Dates of Hearings : **08-04-2022**

Athar Minallah, C.J.- Through this consolidated judgment, the Court will decide the petitions listed in "Annexure-A" attached hereto. The petitioners are employees of organizations controlled by the Federal Government (*hereinafter referred to as "Federal organizations"*). The alleged acts of harassment had transpired in the respective Provinces i.e. outside the territorial jurisdiction of the Islamabad Capital Territory.

2. The sole question that has arisen for consideration is the jurisdiction of the Federal Ombudsman established under the Protection against Harassment of Women at Workplace Act, 2010

(*hereinafter referred to as the "Act of 2010"*). It is noted that after the amendments were inserted in the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the "Constitution"*), through the eighteenth amendment, three provinces i.e. Punjab, Khyber Pakhtunkhwa and Balochistan had promulgated their respective statutes. In case of the Province of Khyber Pakhtunkhwa, the promulgated legislation, the Khyber Pakhtunkhwa Protection against Harassment of Women at Workplace Act, 2018, has confined the jurisdiction of the Provincial Ombudsman to Provincial organizations. In W.P. No.1782/2018 and W.P. No.4086/2018, the complainants were employees of the National College of Arts (*hereinafter referred to as "NCA"*). The alleged acts had taken place in the Province of Punjab. In W.P. No.214/2022, the parties were employees of Military Land and Cantonment Department, controlled by the Ministry of Defence. However, the alleged acts, cause of action, had taken place within the territorial limits of the Province of Khyber Pakhtunkhwa. The complainant had initially filed a representation before the employer but later she chose the option prescribed under section 8 of the Act of 2010 and thus a complaint was filed before the learned Federal Ombudsman. In W.P. No.44/2019, the parties are employees of the United Bank Limited (*hereinafter referred to as the "Bank"*). The Bank operates across the country. The complainant had filed a complaint at Lahore. Pursuant to completion of inquiry, major penalty was imposed by the competent authority. The appeal was preferred by respondent no.3 before the learned Federal Ombudsman.

3. The learned counsels for the petitioners have placed reliance on "*Salim Javed Baig and others v. Federal Ombudsman and others*" [PLD 2016 Lahore 433], "*SZABIST (Shaheed Zulfiqar Ali Bhutto Institute of Science and Technology) through Authorized Representative v. Federal Ombudsman/Ombudsperson through Registrar and 3 others*" [PLD 2018 Sindh 581], "*Jubilee Life Insurance Company Limited through Assistant Executive Officer v. The Federal Government through Secretary Law and 2 others*" [2021 PLC (CS) 1563]. They have argued that the determinant factor for assuming jurisdiction is essentially the cause of action i.e. the act of harassment. They have, therefore, argued that an act of harassment that has taken place outside the territorial jurisdiction of the Islamabad Capital Territory would not fall within the jurisdiction of the learned Federal Ombudsman.

4. The learned counsels for the respondents on the other hand have argued that the determinant factor under the Act of 2010 is not the cause of action but the status of the organization. They have referred to the definitions of the expressions "accused" and "organization" described under 2 of the Act of 2010. They have placed reliance on the cases titled "*Board of Intermediate and Secondary Education, Faisalabad v. Province of Punjab through Secretary Education, Government of Punjab and 2 others*" [1990 CLC (Lahore) 773] and "*Imran Maqbool, President MCB Bank Ltd v. Federation of Pakistan through Secretary Law, Justice and Human Rights Division, Islamabad and others*" [PLD 2019 Lahore 17].

5. The learned counsels have been heard and the record perused with their able assistance.

6. The question raised before the Court is regarding jurisdiction of the learned Federal Ombudsman. In all the cases in hand, the alleged acts of harassment had taken place within the territorial limits of the respective Provinces. After the eighteenth amendment, the legislatures of the respective Provinces have promulgated distinct statutes. What would be the crucial factor to determine the jurisdiction of the learned Federal Ombudsman; whether the place of cause of action i.e. the place where the alleged acts of harassment had taken place or the status of the employer organization?

7. This Court in the judgment reported as "*Jubilee Life Insurance Company Limited through Assistant Executive Officer v. The Federal Government through Secretary Law and 2 others*" [2021 PLC (CS) 1563] has elaborately dealt with the question of jurisdiction of the learned Federal Ombudsman after incorporation of the eighteenth amendment in the Constitution. Placing reliance on the judgment of the learned Lahore High Court reported as "*Salim Javed Baig and others v. Federal Ombudsman and others*" [PLD 2016 Lahore 433], it has been held that the crucial factor, which determines the jurisdiction of the learned Federal Ombudsman is the "cause of action" i.e. the place where the alleged acts or events had emanated. The learned Federal Ombudsman will not be vested with jurisdiction if the events have transpired in a Province because in

such an eventuality the jurisdiction of the Provincial Ombudsman will be attracted. This interpretation is based on the scope of Article 270AA(6) of the Constitution and the effect of the omission of the Concurrent Legislative List.

8. As noted above, the legislatures of the respective Provinces have promulgated statutory amendments and as a consequence the Act of 2010 stands altered and amended to such extent. This Court in the aforementioned judgment has rightly observed as follows.-

"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."

9. As a consequence, the Act of 2010 has lost the status of being enforced to the extent of the Provinces which have altered and amended the Act of 2010. The Federal Ombudsman is, therefore, bereft of jurisdiction in relation to the acts which have allegedly taken place within the territorial jurisdiction of a Province provided the relevant statute itself has determined the scope of the jurisdiction of the Provincial Ombudsman. In case of the legislative amendments made by the legislature of the Province of Khyber Pakhtunkhwa, Federal organizations have been excluded and thus the scope of the Provincial Ombudsman has been restricted to the organizations of the Province. In such an eventuality, the jurisdiction of the Provincial

Ombudsman has been expressly restricted to the extent of the Provincial organizations. The Court, therefore, reaffirms the principles and law highlighted in the earlier case titled "*Jubilee Life Insurance Company Limited through Assistant Executive Officer v. The Federal Government through Secretary Law and 2 others*" [2021 PLC (CS) 1563].

10. For reasons stated above, the petitions, except W.P. No.214/2022 titled "*Hassan Ali Khan Laghari v. Federal Ombudsman for Protection Against Harassment of Women at Workplace & 2 others*", are **allowed** and it is declared that the learned Federal Ombudsman was bereft of jurisdiction because the events had transpired in the Province of Punjab. In case of W.P. No.214/2022, though the cause of action has arisen in the Province of Khyber Pakhtunkhwa but the parties are employees of a Federal organization and, therefore, the Federal Ombudsman is vested with jurisdiction and consequently competent to proceed with the matter. The latter petition, therefore, stands **dismissed**.

(CHIEF JUSTICE).

Announced in the open Court on **07-07-2022**.

(CHIEF JUSTICE)