

JUDGMENT-SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No. 3943 of 2020
Sana Ullah Aman
Versus
Federal Ombudsman, etc.

Petitioner by: Aliya Zareen Abbasi, Advocate,
Respondent No.1 by: Ch. Muhammad Tahir Mehmood,
AAG,
Respondent No.4 by: Barrister Ahsan Jamal Pirzada,
Date of Hearing: 08.03.2021.

FIAZ AHMAD ANJUM JANDRAN, J:- Through the instant writ petition (**the petition**), petitioner impugns orders dated 12.10.2020 & 11.12.2020, passed by the learned respondents 1 & 2 whereby his application for rejection of '**complaint**' filed by the respondent No.4 under the Protection against Harassment of Women at the Workplace Act, 2010 (**Act of 2010**) was dismissed while representation was disposed of.

2. Essential and relevant facts for adjudication of the petition are that respondent No.4 filed complaint against the petitioner with the allegations that on 25.09.2019 at 03:30 pm, she was subjected to harassment by the petitioner in his office i.e. Saarosh Law Firm, F-8 Markaz, Islamabad. The latter contested the complaint through written reply wherein he controverted the allegations. Along with, he filed separate application for rejection of complaint, *inter alia*, being not covered under the Act of 2010 for want of relationship of employer and employee. The respondent No.4 contested the application. The learned respondent No.1 after hearing the parties proceeded to refuse the

application vide order dated 12.10.2020. The petitioner then preferred a representation before the learned respondent No.2 which was disposed of vide order dated 11.12.2020, hence the petition.

3. The crux of submissions advanced by the learned counsel for the petitioner is that both the learned forums have omitted to decide pure question of law qua the maintainability of the complaint filed by the respondent No.4 under the Act of 2010. While highlighting the legal proposition, learned counsel argued that only an employee can bring an action before the learned respondent No.1 and the Lawyers/Advocates/Attorneys-at-Law enrolled by the respective Bar Councils do not form part of an Organization as defined in the Act of 2010; that the respondent No.4, does not, in any way falls within the definition of 'employee' contemplated in section 2(f) of the Act of 2010. According to the arguments advanced by learned counsel, neither the nature of work nor the relationship of an advocate with client forms relationship of an employee and employer at workplace and the alleged incident did not happen at workplace as per Act of 2010. Even otherwise, in presence of a special code of conduct under the Legal Practitioners and Bar Councils Act, 1973 (**Act of 1973**) and Rules framed thereunder, wherein remedy by way of section 41 of the Act of 1973 is provided against any misconduct of a lawyer. Learned counsel fortified the submissions by placing reliance upon case laws reported as **2020 CLD 1026 (SC)**, **PLD 2020 Lahore 54** and **PLD 2016 Lahore 433**.

4. On the other hand, learned counsel for respondent No.4 contended that the issue i.e. harassment at workplace by an employer to an employee is not restricted to an

employee but extends to all kinds of sexual harassment against women which could only be decided by way of recording of evidence and the object of the Act of 2010 is to provide speedy remedy to avoid normal lengthy procedure; that any complaint on the allegation of harassment can be filed before the learned respondent No.1 which provides special forum to agitate the allegations qua impeachment of dignity under the Act of 2010. Learned counsel placed reliance upon case laws reported as **2013 MLD 225, PLD 2019 Lahore 407 and 2019 P.Cr.LJ 806.**

5. Learned AAG was of the view that proper course would be to wait for final outcome of the complaint; that there is no provision of asking for rejection of complaint under the Act of 2010 and that there are concurrent findings of the competent forums, therefore, no interference is called for.

6. Heard the learned counsel for the parties, learned AAG and examined the record with their able assistance.

7. In order to appreciate objection qua nature of the order as being interim, order-in-original as well as that of the respondent No.2 has been gone through. The learned respondent No.1 has observed that *"the Harassment of Women at the Workplace Act, 2010 is not confined only to the relationship of an employer and employee, but it extends to all kinds of sexual harassment with any woman by misusing/ exploiting his official position and capacity. It is also held by superior courts that it is a matter of common sense that a lady would ruin her modesty/dignity/respect by making false complaint of sexual harassment just to defame a person."*

8. On the findings ibid, the learned respondent No.2 on the representation filed by the petitioner has observed that

"There is as yet no final determination of the issues involved i.e. employer/employee relationship at workplace by the learned ombudsman i.e. to be adjudicated at the time of final disposal of the complaint on the basis of evidence to be produced by the parties and the observations therein are merely of tentative nature. It is an interlocutory order made on the application of accused for rejection of the complaint."

9. As manifested from the observations of the learned respondent No.1 *ibid*, the jurisdiction in the matter has since been assumed by observing that the Act of 2010 is not confined to the relationship of an employer and employee but extends to all kinds of sexual harassment with any woman by misusing/exploiting official position and capacity. It is thus a final culmination by a forum on the point of jurisdiction, being pressed through the petition and cannot be termed a pending */is* on the subject.

10. Now adverting to the main question before the Court, whether the Ombudsman has jurisdiction in the complaint or not?

11. Needless to be mentioned that question of jurisdiction is of much significance and when agitated is to be decided first because when the concerned forum is not vested with the authority to adjudicate the matter then all subsequent proceedings, orders would be considered as "proceedings/orders without jurisdiction".

12. The Hon'ble Supreme Court of Pakistan in a judgment reported as ***"Province of Punjab through Secretary to Government of Punjab, Communication and Works Department, Lahore and another v. Messrs Muhammad Tufail and Company through Muhammad Tufail***

(deceased) through Legal Heirs" (PLD 2017 SC 53) enunciated the law and declared that:-

"The concept of jurisdiction has its genesis in the physical power of a Court to issue process to persons within the reach of the Court. Shorn of all extraneous 'frills', this is the essence of jurisdiction. A Court is to decide matters when persons relating thereto are within its reach. This basic jurisdiction is then regulated by defining the limits of that 'reach' by setting pecuniary limits, or by assigning different 'subjects' within one territory to different Courts, for example, by assigning banking and environmental matters to different Courts within one territory."

13. The jurisdiction is the foundation upon which superstructure is to be build. In its existence/presence, the adjudication is considered legal, otherwise, the whole superstructure built thereupon would be considered as without jurisdiction and *coram non judice*. The concept of jurisdiction is very much rational that whether the person against whom complain/claim is preferred is liable to be adjudicated by the forum concerned and authority is vested with the role of adjudication or not.

14. Keeping in view the conceptual legal position on the subject, the facts/statutory provisions of the case in hand are considered and for that purpose, it is imperative to go through section 8 of the Act of 2010 which reads as under:-

"8.Ombudsman to enquire into complaint.- (1) Any employee shall have the option to prefer a complaint either to the Ombudsman or the Inquiry Committee.

(2) The Ombudsman shall within 3 days of receiving a complaint issue a written show cause notice to the accused. The accused after the receipt of written notice, shall submit written defense to the Ombudsman within five days and his failure to do so without reasonable cause the Ombudsman may proceed ex parte. Both the parties can represent themselves before the Ombudsman.

(3) The Ombudsman shall conduct an inquiry into the matter according to the rules made under this Act and conduct proceedings as the Ombudsman deems proper.

(4) For the purposes of an investigation under this Act, the Ombudsman may require any office or member of an organization concerned to furnish any information or to produce any document which in the opinion of the Ombudsman is relevant and helpful in the conduct of the investigation.

(5) The Ombudsman shall record his decision and inform both parties and the management of the concerned organization for implementation of the orders." [Emphasis supplied]

15. Section 2(f) of the Act of 2010 defines 'employee' in the following terms:-

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

16. After having privilege to go through the provisions *ibid*, it is now incumbent to go through the contents of complaint filed by the respondent No.4 to the respondent No.1. Para 1&2 whereof being relevant read as under:-

"I am writing this letter to complain about an unfortunate incident that happened to me at the office SAAROSH Law Firm, F-8 Markaz where I had my meeting scheduled. I believe that I had been sexually harassed by Mr Sana Ullah Aman at his office who is an Advocate and a legal consultant.

I am currently working in Pakistan National Accreditation Council and also happen to be a social/political activist." [Emphasis supplied]

17. By reading the two provisions *ibid* in juxtaposition with the complaint of respondent No.4 it emerges out that respondent No.4 did not fall in any of the categories of employee contemplated in section 2(f) of the Act of 2010,

which bestowed authority to the learned respondent No.1 to initiate action in terms of section 8 *ibid*. According to her own showing, she is working in Pakistan National Accreditation Council. This express fact could not be ignored.

18. It is well settled principle of interpretation of statute that the Court cannot import any meaning, impression of any nature, when same is provided in the statute itself like in the Act of 2010 (***Shaheena Masood and 9 others v. Federal Ombudsman Secretariat through Federal Ombudsman and 2 others 2020 PLC (C.S.) 186 Islamabad***). The language is quite specific, certain and unambiguous that only **"an employee can lodge a complaint against an employer."** Surely nothing is there to impute the claim of the respondent No.4 otherwise as opposed to contents of her complaint, wherein she herself stated that there was her meeting with the petitioner in connection with some project. It seems that it was just a meeting where alleged incident happened. Mere visitation of a woman to the office of an advocate to discuss details of some project, could not bring her within the definition of an employee. Thus, the case of respondent No.4 is not covered under section 2(f) of the Act of 2010.

19. The complainant has not brought on record any document i.e. employment agreement, writing etc. from where it could be conferred that she was an employee in terms of section 8 of the Act of 2010. Rather there is written assertion of her own, wherein it is unambiguously mentioned that relationship between the petitioner and the complainant was not of any employer and employee. As per provisions of the Act of 2010, the accused must be an

employee of the organization or an employer and complainant should be an employee of that organization. No ambiguity is surfaced that neither petitioner is employer nor the complainant is employee of the Saarosh Law Firm.

20. The Hon'ble Lahore High Court in a judgment reported as **"Meesha Shafi v. Office of the Governor Punjab and others"** (PLD 2020 Lahore 54), held that '*only an employee woman can petition the Ombudsman*'.

21. This Court is of the view that every woman is not entitled to bring, lodge a complaint before Ombudsman but only a woman who is employee of an Organization and had been sexually harassed by another employee or the employer according to section 2(h) of the Act of 2010 is competent to lodge the complaint. There is no matter of choice of a woman but is of provision of forum concerned. Act of 2010 is a special law and special procedure is provided for adjudication of the complaints. The provisions of the Act of 2010 cannot be overlooked or ignored.

22. There is another important aspect of the matter regarding assumption of jurisdiction of the complaint filed by the respondent No.4. The petitioner as per express stance of respondent No.4 is an advocate and running a law firm with the name and style "*Saarosh Law Firm*". There is a special law i.e. the Act of 1973 read with the Islamabad Legal Practitioners and Bar Council Rules, 2018 where a remedy is provided against an advocate who violates and not acts as per professional ethics.

23. In the light of above discussion, question posed in Para-10 is answered accordingly.

24. The case laws relied upon by learned counsel for the respondent No.4 do not extend any help to her due to having distinct facts and legal significance.

25. For what has been discussed above, the petition is **allowed** and complaint filed by respondent No.4 before the learned Ombudsman and proceedings initiated on said complaint under the Act of 2010 are declared as illegal, without lawful authority and jurisdiction. Consequently, all orders passed in the proceedings are nullity in the eyes of law. However, she may avail remedies available to her under the law. This Court has restrained itself to discuss/comment on any merit of the case as it may cause prejudice to either side while adjudicating the matter at appropriate forum, if agitated.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Announced in open Court on **25.05.2021**.

JUDGE

APPROVED FOR REPORTING