

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

**Constitutional Petition No.D- 3707 of 2021**  
*(Mst. Shereen v. The State through Govern of Sindh and others)*

Date	Order with Signature of Judge
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1. For order on office objection
2. For hearing of CMA No.15472/2021
3. For hearing of main case

**20.1.2023**

Mr. Mehmood-ul-Hassan, advocate for the petitioner  
Mr. Ali Safdar Debar, AAG.  
Malik Naeem Iqbal, advocate for respondents No.4, 5 and 6

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**ORDER**

Through this petition, the petitioner has impugned order/decision dated 02.6.2021 passed by the Governor of Sindh on a representation made before him by respondents No.4 to 6 under Section 9 of The Protection Against Harassment of Women at the Workplace Act, 2010, *inter-alia*, on the ground that there is sufficient evidence available against the private respondents under the Act 2010, which has erroneously been discarded by the Governor Sindh vide order dated 02.6.2021.

2. Briefly the facts as articulated in the memo of the petition are that the petitioner filed this petition against the order dated 02.6.2021, passed by the the Governor of Sindh on a representation made before him by respondents No.4 to 6 under Section 9 of The Protection Against Harassment of Women at the Workplace Act, 2010. The petitioner claims that respondents No.4 to 6, who allegedly harassed the petitioner, while she was on duty in the National Institute of Cardiovascular Diseases (NICVD), by using filthy language, against which she lodged a private Complaint before the learned Provincial Ombudsman Sindh (POS) for causing harassment, mental agony and creating a hostile environment at the workplace wherein the learned Provincial Ombudsman Sindh found that the complainant/petitioner established her allegations against the accused persons/respondents No.4 to 6 for causing harassment to the petitioner. Consequently, the learned Provincial Ombudsman in exercising the powers under the Act, 2010, convicted respondents No.4 to 6 by imposing the major penalty of removal from their service. The petitioner averred that Governor Sindh set aside the order of the learned Provincial Ombudsman Sindh and did not hear the petitioner in person. Petitioner submitted that all the witnesses have supported

her stance and she has proved her allegations against respondents No.4 to 6. It is asserted that the petitioner would not ruin her modesty, dignity, and respect by making a false complaint of sexual harassment just to defame her colleagues. She lastly added that the act of respondents No.4 to 6 is a clear violation of human rights as enshrined under Articles 14, 15, and 21 of the Constitution. She prayed for setting aside the order dated 02.6.2021 passed by the Governor of Sindh.

3. At the outset, we asked the learned counsel to satisfy the maintainability of the instant petition in terms of the findings of Governor Sindh on the subject issue and its reappraisal by this court under Article 199 of the constitution. Mr. Mehmood-ul-Hassan learned counsel for the petitioner replied to the query and extensively read the evidence part of the case as incorporated in the judgment dated 13.2.2020 passed by the learned POS and submitted that on the complaint of the petitioner, the Provincial Ombudsman for Protection against Harassment of Women at the Workplace vide judgment dated 13.2.2020 has decided the issue in favor of the petitioner, whereby respondents No.4 to 6 were convicted and penalized by the imposition of major penalty of removal from service; in addition to payment of fine(s). Per learned counsel, through impugned order, the findings of the Ombudsman have been set aside without proper hearing by the Governor himself, whereas, through impugned order, the evidence led by the petitioner has been discarded without proper appreciation of the same. He submits that as per the order of the Ombudsman, it had come on record that these respondents had failed to rebut the allegations with a categorical denial; nor did they place any material to rebut the same, and, therefore, the Governor Sindh has failed to properly appreciate the evidence led by the petitioner and other witnesses. He further contended that in all such cases of harassment at the workplace, as and when a representation was filed, the Governor himself had heard the matter and thereafter had passed the order, however, in this case, the entire exercise has been conducted by his Secretary of Governor, who under the Act, 2010, has no lawful authority and jurisdiction to decide the representation of the private respondents; that respondent No.2 has not pursued the factual position and evidence produced by the parties before him and passed the impugned order dated 02.6.2021, which is liable to be set aside and the judgment passed by the learned POS may be restored. It is further contended that respondent No.2, who entertained the representation/appeal of the private respondents was not competent to proceed with the representation/appeal; that respondent No.1 himself did not hear the representation/appeal and passed the impugned order, which is not sustainable in the eye of law and is liable to be set aside. Learned counsel referred to the Complaint filed by the petitioner under section 8 of the

Protection against Harassment of Women at Workplace Act,2010, and submitted that the Governor erroneously set aside the complainant filed by the petitioner vide order dated 2.6.2021 and erroneously opined at paragraph 6 of the order. Learned counsel added that violence and harassment in the workplace were/are most prevalent in the country and women face violence and harassment not just once but multiple times in their working lives “Psychological violence and harassment are the most prevalent across the country and women are particularly exposed to sexual violence and harassment. He added that the most common reasons for non-disclosure were “waste of time” and “fear for their reputation”. Those most likely to be affected by violence and harassment include youth, and wage and salaried women. He further submitted that harassment, in all forms and its manifestations, may it be based on race, gender, religion, disability, sexual orientation, age-related, an arrangement of *quid pro quo*, and/or sexual harassment, etc., affects and violates the dignity of a person more particular working-class women, as guaranteed under the Constitution of Pakistan, 1973. He next argued that insulting modesty or causing sexual harassment at the workplace or public place etc. is a criminal offense under Section 509 of the Pakistan Penal Code, 1860, which is punishable for a term that may extend to three years, or with a fine up to five hundred thousand rupees, or both with. He next submitted that the petitioner to prove her case has examined herself on oath and witnesses Muhammad Asghar Abbas, Muhammad Parvaz, and Muhammad Faheem whose depositions have been reproduced in paragraph 6 of the memo of the judgment passed by the learned POS. Per learned counsel, Governor Sindh has discarded the evidence of the petitioner and her witnesses on the premise that no case for sexual harassment was made out by the complainant/petitioner and gave his erroneous findings in Paragraph 6 of the impugned order. On the maintainability of this petition, he submitted that this is a constitutional petition under Article 199 of the Constitution and this court is the guardian of the fundamental rights of the citizen of this country and can look into the legality and propriety of the decision of subordinate tribunals under the writ of mandamus. Lastly, he prayed for setting aside the impugned order passed by respondent No.2. In support of his contention, counsel for the petitioner has relied upon the cases reported as SBLR 2019 Tribunal 101, AIR 1997 SC 3011 and 2019 P.Cr.L.J. 806.

4. In contra, Malik Naeem Iqbal, learned counsel for the private respondents has supported the decision of the Governor of Sindh and has contended that the petitioner was not sexually harassed and she filed her complaint before the Provincial Ombudsman Sindh at the instigation of Dr. Hameedullah,

Administrative Executive; that Section 10 of the Act 2010 permits that Governor can pass order on representation as he may deem fit and his Principal Secretary performs functions on behalf of Governor Sindh, however, the order issued after taking approval of Governor Sindh; that it was brought on record that an official rivalry was going on between respondent No.4 Col. (R) Abdul Latif Dar and Dr. Hameedullah, Administrative Executive since respondent No.4 was given the charge of Additional Administrative Executive, therefore, harassment was not done by the private respondents and complaint was filed at the instance of Dr. Hameedullah, Administrative Executive. It is further contended that no constitutional violation has been committed while passing the impugned order; that respondent No.2 / Principal Secretary to the Governor performs the functions on behalf of the Governor Sindh, along with his team conducts a hearing to reach a fair conclusion, subsequently after fulfilling legal formalities summary of the case is submitted before the Governor Sindh for taking his order; that findings of the speaking order are entirely consistent with the evidence and law in light of thoroughly conducted proceedings as well as exercise of the power conferred under the Act 2010. It is contended that respondent No.2 is competent to entertain appeals and respondent No.1 has passed a speaking order lawfully after taking into consideration all facts raised during proceedings and drawing the conclusion on sound reasoning. Lastly, he prayed for the dismissal of the instant petition. Learned counsel for respondents No.4 to 6 has relied upon the cases of Federation of Pakistan v. Professor Dr. Anwar [2006 SCMR 382], Federation of Pakistan v. Muhammad Tariq Pirzada [1999 SCMR 2744], and Raza Fecto Tractors (Pvt.) Ltd. v. Federation of Pakistan [2015 PTD 438].

5. We have heard the learned counsel for the parties on the maintainability of the instant petition and perused the record with their assistance.

6. It is a well-settled principle of law that the High Court in the exercise of its constitutional jurisdiction is not supposed to interfere with findings on the controversial question of facts, even if such findings are erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the findings are based on evidence that may cause the miscarriage of justice but it is not proper for this Court to disturb the findings of facts through a reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal in terms of the ratio of the decisions rendered by the Honorable Supreme Court in the case of Shajar Islam v. Muhammad Siddique and 2 others, **PLD 2007 SC 45**, Farhat Jabeen Vs. Muhammad Safdar and others, **2011 SCMR 1073**.

7. It is well settled that the scope of Constitutional jurisdiction on the subject matter is narrow and that this Court does not sit as a court of appeal or revision on questions of findings of facts, for the reason that the High Court while exercising jurisdiction under Article 199 of the Constitution may interfere only when it was necessary and a wrong or illegal conclusion had been drawn by the courts below. High Court in its constitutional jurisdiction was not to sit as a court of appeal on questions and findings of facts, recorded by a competent forum and would not interfere in the same in constitutional jurisdiction in a routine. The aforesaid proposition is settled by the Honorable Supreme Court in the case of Haji Muhammad Saeed v. Mst. Bano Begum **2012 CLC 1195** and **Shakeel Ahmed & another v. Muhammad Tariq Farogh** **2010 SCMR 1925**.

8. In light of these guiding principles, this Court cannot proceed to unsettle the findings of the forum below based on a reappraisal of the evidence under Article 199 of the Constitution, which is the function of the Appellate Court, and at the appellate stage, such plea of the petitioner has already been discarded by the competent authority with certain reasoning as discussed in the impugned order. Additionally, this court is not a court of appeal against the decision of the competent authority i.e. Governor of Sindh under the Act-2010, therefore, the evidence so recorded by the learned POS and appreciated by the Governor of Sindh could only be seen if there is apparent illegality, jurisdictional defect, and perversity in the impugned order, thus his findings are not open for reappraisal in terms of Article 199 of the Constitution.

9. So far as the plea of the petitioner that she has not been heard and the Governor Sindh has not taken pain to decide the case by himself, suffice it to say, Governor Sindh has signed the appellate order and discussed each issue, and has given his findings by appreciating the evidence brought on record, thus this plea of the petitioner cannot be threshed out in terms of Article 199 of the Constitution.

10. In view of the foregoing discussion, and under the facts and circumstances of the case, the instant Petition is found to be not maintainable under Article 199 of the Constitution, therefore, dismissed along with the pending application(s).

JUDGE

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