

CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No-313 of 2024

Abdul Karim Lashari

Vs.

The Governor of Sindh & Others

HIGH COURT OF SINDH

Composition of Bench.

D/B.

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Adnan Karim Memon

Dates of hearing : 17-12-2024

Decided on : 24 -12-2024

(a) Judgment approved for Reporting

Yes



CERTIFICATE.

Certified that the judgment */Order is based upon or enunciates a principle of law
*/decides a question of law which is of first impression/distinguishes/. Over-rules/
reverses/explains a previous decision.

* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

IN THE HIGH COURT OF SINDH AT KARACHI
[Constitutional Jurisdiction]

C.P.D No. P-313 of 2024

18-01-2024

[Signature]
National Registrar (Writ)

Abdul Karim Lashari
Son of Abdul Hadi Lashari,
Muslim, Adult,
Resident of C-28, Block-2,
Near Bilal Masjid, Clifton,
Karachi.

Petitioner

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VERSUS

1. **The Governor Sindh**
Through its Principal Secretary,
Having office at Governor House,
Karachi.
2. **The Province of Sindh**
Through its Chief Secretary
Having office at Sindh Secretariat,
Karachi.
3. **The Learned Ombudsman**
Protection Against Harassment of Women at Workplace
Provincial Ombudsman Sindh,
Karachi.
4. **The Secretary**
Culture, Tourism, Antiquities & Archives Department
Government of Sindh,
Having office at Sindh Secretariat,
Karachi.
5. **The Director General**
Antiquities & Archives Department
Government of Sindh
Having office at Antiquities House - C/82,
Block-2, Near Bilal Masjid, Clifton,
Karachi
6. **Mst. Zahida Qadri,**
Daughter of Mustafa Mian Qadri,
Muslim, Adult,
Having office at Directorate General,
Antiquities & Archives House - C/82,
Block-2, Near Bilal Masjid, Clifton,
Karachi..... Respondents

CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF PAKISTAN 1973

IN THE HIGH COURT OF SINDH KARACHI

Before:

**Mr. Justice Muhammad Karim Khan Agha, Judge
Mr. Adnan Ul Karim, Memon, J,**

CONST. PETITION NO.D-313 OF 2024

Petitioner	Abdul Karim Lashari son of Abdul Hadi Lashari through Malik Altaf Hussain, Advocate.
Respondents No.1 to 4	Through Mr. Ali Safdar Deepar, Assistant Advocate General Sindh.
Respondent No.5	Through Mr. Ashraf Ali Lashrai, Law Officer.
Respondent No.6.	Mst. Zahida Qadri, through Mr. Shahbakht Pirzada, Advocate.
Date of Hearing	17.12.2024.
Date of Announcement	24.12.2024

ORDER

Muhammad Karim Khan Agha, J. The Provincial Ombudsman of Sindh vide order dated 23.09.2021 found the petitioner/appellant Abdul Karim Lashari guilty of sexual harassment under the Protection Against Harassment of Women at the Workplace Act, 2010 (the Act) and passed the following penalty against him at paragraph 48 of the impugned order as under:-

"For the foregoing facts, circumstances and admitted WhatsApp messages, the complainant has proved her allegations of sexual harassment and mental agony against the accused. Consequently, accused Abdul Kareem Lashari is penalized under Section 4, sub-section 4(ii)(c) of the Act, 2010 and is removed from his service instantly. Office is directed to transmit the copy of instant order to the Secretary, Antiquities and Archeology, Government of Sindh, the Chief Secretary, Government of Sindh and the Accountant General Sindh for information and compliance of the order in letter and spirit within 30 days without fail under intimation through the Registrar of this office."

2. The relevant facts are that allegedly the complainant had been subjected to several unwelcome sexual gestures, unwanted deliberate touching and offensive remarks by the accused from July 2018 to March 2019, like babe, sweetheart and honey etc. The complainant tolerated the accused's offensive attitude and although he stopped his unwanted verbal and physical acts but he often turned work discussions in to indecent__

sexual topics, comments about her personal life, clothing and appearance. On the complainant's refusal to accept the offer of sexual relationship with the accused, he started spreading false rumors about their relationship in the department which destroyed her image making her work environment offensive and intolerable. The complainant's first interaction with accused was about departmental promotions and then he started calling her but she respected him as a senior. The accused sometimes called complainant late at night but she did not respond to him and often asked the complainant to meet up with him but she always refused. The accused during his first call talked about complainant's hijab and was keen about her naqab, getup and appearance and often said that she is educated but wears naqab. The complainant developed professional working relationship with accused in 2018 due to his cooperative nature, being helpful and efficient. Initially, accused acted decently to portray his clean image but after gaining her trust, he made sexual overtures to her. In 2018, once the complainant was at a mechanic shop near Bilawal House for repairing her car, and accused came there and asked her to wait in his car, and though she refused, but he insisted her to sit in his car. In the month of July 2018, the complainant and accused went to Hyderabad together, as she wanted to visit Sindh Public Service Commission but was hesitating to go alone being her first visit. The accused had also some work at Hyderabad, therefore, complainant asked him that she wanted to follow his car in her car but he said that they can ride together and she accepted his offer being a trustworthy colleague. However, on the way to Hyderabad, the accused proposed to the complainant but she declined. Then on their way back to Karachi, accused held complainant's hand without her consent and she shouted to leave her as they can talk. The accused apologized but the complainant was upset and said that they were not compatible due to their family background and she wanted to pursue her career. Thereafter, accused used to follow the complainant and stand in her way, and took photographs of the places where she was present without her consent and then showed them to her. Therefore, complainant talked to her senior who advised accused to refrain from such activities, but he continued his acts and she ignored him to save her job and survive in the department. In February 2019, the accused sent driver namely Karim Baba to the complainant to reconcile but she refused. Thereafter in office parking, the complainant found that there was no

petrol in her car though its tank was locked, and after four days, the headlight of her car was also broken, so, she confronted the accused but he swore to his late mother that he had not done such things. Therefore, on next day the complainant said sorry to accused but he uttered inappropriate sexual remarks. One colleague Ali Lashari asked the complainant about accused and she shared details who then scolded the accused. On 27.03.2019, the accused distributed his wedding cards and then office staff started talking about her character and dignity. In April 2019 the Deputy Director asked the complainant about her secret marriage with accused, as accused had shown him pictures of her broken watch but she then clarified that accused had grabbed her hand forcefully on 11.01.2019 and broke her watch. On 21.03.2019, the complainant and accused were working in Directorate office on the sites of Makli and he tried to kiss her but she saved herself. Ms. Alina, Sub-Engineer had moved harassment complaint against accused in March 2017 that he has no control upon himself. The Department then sought explanation from the accused but he had filed his written apology. Ms. Rubab Azhar made verbal complaint in December 2017 that accused not only disturbed her but forced her to work with him and her transfer order was also issued with the assistance of Assistant Director, therefore, she informed the entire facts to the DG who warned accused verbally and recalled the said order. The accused always demanded kiss from the complainant upon which she became annoyed and blocked his cell phone number. Due to the adverse effects of harassment incidents, complainant has been suffering from severe depression and has lost weight. The complainant could not sleep due to nightmares as she could hear accused's voice that she is the type of girl who can sit in anyone's car and if he had forced her, he could have had his way with her (sexually). Initially, the complainant had visited the office of Ombudsman to file complaint but staff had advised her to approach her high-ups first, therefore, on 29.03.2019, she moved her complaint to Director General but of no avail. Eventually the complainant was compelled to file a complaint against the accused with the Ombudsman.

3. After appreciating the evidence on record, considering the documents on record and hearing the parties the Provincial Ombudsman Sindh for the Protection Against Harassment of women at the work place

(the Ombudsman) convicted and sentenced the appellant/petitioner as mentioned earlier in this Order. Subsequently the appellant/petitioner filed a representation against the aforesaid impugned Order of the Ombudsman before the Governor of Sindh under Section 9 of the Act which was declined vide order dated 22.06.2023. Thereafter the Sindh Culture, Tourism, Antiquities & Archives Department, Government of Sindh vide order dated 01.01.2024 removed the appellant/petitioner from service in accordance with the impugned orders.

4. Thereafter the appellant/petitioner has filed this petition against all of the aforesaid judgments/orders which we intend to dispose of through this one common order.

5. Learned counsel for the appellant/petitioner contended that the Complainant (Mst.Zahida Qadri) had already made a complaint against the appellant/petitioner to the head of her department which was still pending so could not approach the Ombudsman; that under S. (4) (2) of the Act the Ombudsman had no power to remove the appellant/petitioner from service and that he could only recommend the removal of the appellant /petitioner which recommendation may or may not be complied with by the appellants/petitioners department; even otherwise based on the evidence on record the complainant had failed to prove sexual harassment at the work place and the Ombudsman had misread/misinterpreted the evidence on record and as such the impugned order of the Ombudsman be set aside which would lead to the other orders against him also falling as the super structure (the impugned Order of the Ombudsman) upon which they were based had collapsed and as such they also fell along with the impugned order. In support of his contentions he placed reliance on the cases of **Trading Corporation of Pakistan V Devan Sugar Mills Limited** (PLD 2018 SC 828) and **Kinza Anwar V Office of the Ombudsman for protection against harassment of women at the work place** (2022 CLC 1477 Isl.).

6. On the other hand learned AAG and learned counsel for the complainant contended that the fact that the complainant had made a complaint before her head at the place of her work did not debar her from approaching the Ombudsman; that the Ombudsman's order was fully in accordance with the law and that this court had no power in its

constitutional jurisdiction to reassess the evidence on record and that the impugned orders all be upheld. In support of their contentions they placed reliance on the case of **Raja Tanveer Safdar V Mrs Tehmina Yasmeen** (PLD 2024 SC 795)

7. We have heard the parties, perused the material available on record and considered the case law cited at the bar.

8. We find that this petition in essence revolves around three main issues (a) whether or not the complainant could make a complainant against appellant/petitioner before her own department as well as move the Ombudsman under the Act, (b) whether the Ombudsman had the power to remove the appellant /petitioner from service under the Act once the appellant was found guilty for an offence under the Act and (C) Whether this court in its Constitutional jurisdiction can reassess the evidence from a factual perspective.

Turning to the first issue whether or not the complainant could make a complainant against appellant/petitioner before her own department as well as move the Ombudsman under the Act.

9. It is an admitted position that the complainant initially made a complaint to the DG of her department about the appellants/petitioners sexual harassment on 28.03.2019. However it appears that very little effective action came from her complainant to her department which still remains pending as of today almost 4 years later *when under S.4(4) of the Act the Inquiry Committee of the department ought to have completed its inquiry and submitted its findings and recommendations to the competent authority within 30 days.*

10. Due to this sluggish action by her own department in to her most serious complaint in order to seek redressal of her grievances **3 months later** on 13.06.2019 (despite the Inquiry Committees deadline of 30 days) the complainant sent a complainant to the Ombudsman regarding sexual harassment metered out to her by the appellant/petitioner under the Act.

11. The helplessness of the complainant is set out in her letter as under in material part;

"It has taken me a long time to muster up the courage to file this complaint as this is a very serious situation to me. I have been

subjected to a series of verbal and physical acts from his side that constitute sexual harassment. To maintain the integrity and decorum of the office I have submitted the application to the senior management, and requested to form an "Inquiry Committee", however, no action has been taken so far, therefore, I'm filing it in the Provincial Department of Ombudsman" (bold added).

12. In such like cases usually the doctrine of election kicks in as was elaborated in the case of **Trading Corporation of Pakistan** (Supra). That is once the complainant chose to make a complaint before her departmental Inquiry Committee she was barred from making a complaint to any other fora.

13. In considering this doctrine we find that its applicability will be based on the particular facts and circumstances of each case. This case involved a case of serious sexual harassment at the work place which was a very difficult issue for the lady complainant to broach in the first place. Never the less she was brave enough to do so. The question then emerges whether the complainant is tied to her original complainant **which is proceeding very sluggishly** (and certainly in violation of the time line given of 30 days under S.4 (4) of the Act for the Inquiry Committee to make its findings and recommendations) in a male dominated department which she will have to attend daily and come face to face with the person she has accused of sexual harassment which would be particularly uncomfortable for the complainant if not traumatic. It has come in evidence that the complainant suffered sleepless nights and lost weight due to the sexual harassment for which she would have received little support from her other male colleagues who might well have ostracized her. Thus, in our view sexual harassment cases cannot be treated like ordinary cases where the doctrine of election would apply.

14. Sexual harassment in the work place has only recently been grudgingly accepted in Pakistan which is a male dominated society and women who suffer the same cannot be left at the mercy of an internal complaints system which is sluggish and is perceived to favour the male sex. Sexual harassment at the work place, or any where else for that matter, is a separate species of a serious offence altogether and must be viewed from a different lens if we are to move forward as a progressive society where all people are treated as equal under the constitution whilst embracing the concept of an Islamic welfare state where women are afforded up most respect and held in very high esteem.

15. As such we find that in sexual harassment cases where the remedy of a complaint before the department is extremely sluggish and often ineffective the concept of election will not be strictly applied and we find the case of **Trading Corporation of Pakistan** (Supra) distinguishable based on the particular facts and circumstances of this case. In essence the complainant in this case seems to have abandoned her complainant as it appeared to be going no where and upon finding out of the possibility of filing her complainant before the Ombudsman made a complaint before the Ombudsman under the Act which gave her a more private, efficacious and speedy remedy in connection with a highly sensitive and personal matter. Namely, sexual harassment.

16. As such we do not find the doctrine of election to be applicable based on the particular facts and circumstances of the case and find that the Ombudsman under the Act was lawfully able to adjudicate the complainant's complainant which was made to him under the Act.

Turning to the second issue on whether the Ombudsman had the power to remove the appellant/petitioner from service under the Act once the appellant was found guilty of an offence under the Act.

17. The case of the appellant/petitioner is that the Inquiry Committee under the Act only had the power to **make recommendations** rather than pass **orders** under S.4 (4) sub-section (i) and (ii) of the Act and **not to pass orders** in respect of the penalties to be imposed if a person was found guilty of an offence under the Act.

18. Section 4(4) sub-section (i) and (ii) and (5) and (6) of the Act are set out below for ease of reference:-

4 (4) **The Inquiry Committee** shall submit its findings and recommendations to the Competent Authority within thirty days of the initiation of inquiry. **If the Inquiry Committee finds the accused to be guilty it shall recommend to the Competent Authority for imposing one or more of the following penalties:**

(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.

(5) The Competent Authority shall impose the penalty recommended by the Inquiry Committee under sub-section (4) within one week of the receipt of the recommendations of the Inquiry Committee.

(6) The Inquiry Committee shall meet on regular basis and monitor the situation regularly until they are satisfied that their recommendations subject to decision, if any of Competent Authority and Appellate Authority have been implemented.

19. Another key section of the Act to note at this juncture is Section 8 which provides as under;

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

20. In this case as mentioned above because the Inquiry committee was not providing an adequate, efficacious and speedy remedy the complainant in her letter was **compelled to move the Ombudsman** under S.8 for redressal of her grievance which we have already found to be permissible based on the particular facts and circumstances of this case and in effect abandoned her complaint before the Inquiry committee which seemed to be going no where before any decision had been made by the Inquiry committee. As such the case of **Kinza Anwar** (Supra) is distinguished. Had the Inquiry Committee moved faster and passed a decision within the time frame set out for it under the Act it is doubtful whether the Ombudsman could have been approached under the Act. This, however, was not the case. The Complainant's complaint therefore ceased to be before the Inquiry Committee and as such the question of recommendation does not arise. Instead the complainant was before the Ombudsman

21. As such the complainant's case was dealt with under the Act by the Ombudsman.

22. Section 10 of the Act sets out the Ombudsman powers which are reproduced as under for ease of reference;

"S.10. Powers of Ombudsman.

The Ombudsman shall for the purpose of this Act have the same powers as are vested in a Civil Court under the Code of Civil Procedures, 1908 (Act V of 1908), in respect of the following matters, namely

- i) Summoning and enforcing the attendance of any person and examining him on oath;
- ii) Compelling the production of evidence;
- iii) Receiving evidence on affidavits;
- iv) Issuing commission for the examination of witnesses
- v) Entering any premises for the purpose of making any inspection or investigation, enter any premises where the Ombudsman has a reason to believe that any information relevant to the case may be found; and
- vi) The Ombudsman shall have the same powers as the High Court has to punish any person for its contempt.

(2) Ombudsman shall while making the decision on the complaint may impose any of the minor or major penalties specified in sub-section (4) of Section 4." (bold added)

23. It is absolutely clear therefore that after hearing and deciding the complaint under the Act by virtue of Section 10(2) that the Ombudsman **had the power to impose any of the minor or major penalties specified in sub-section 4(4)** which we have already reproduced above which included the power to remove the appellant from service under section 4 (4) (ii) (c) of the Act which he did through his impugned order.

24. Hence we find the impugned order of the Ombudsman to be in accordance with law.

Turning to the third issue whether this court in its Constitutional jurisdiction can reassess the evidence from a factual perspective.

25. It is well settled by now that this court in its Constitutional jurisdictional cannot enter into an examination of factual controversies as was held in the case of **Raja Tanveer Safdar** (Supra) which was also a case under the Act where the appellant/petitioner wanted to delve into a factual controversy by examining the evidence where it was held as under in material part;

"12. There is another important issue in the instant case. We note with reference to this case that Respondent No.1 filed her complaint before the Ombudsman which was then challenged by the Petitioner before the Governor Punjab. Both these forums are forums of fact where parties can lead their evidence for a factual

determination. Therefore, the Order of the Governor will be the final order on the factual side, which cannot be then challenged before the High Court in constitutional jurisdiction in the form and substance of a second appeal on the facts of the case. The High Court cannot interfere in its constitutional jurisdiction on findings of facts recorded by the competent court, tribunal or authority unless the findings of fact are so perverse and not based on the evidence which would result in an error of law and thus, justified interference. Therefore, for all intents and purposes, the factual controversy comes to an end after the Order of the Governor, and if, there is any jurisdictional defect or error and procedural improprieties of the fact-finding forum only then the High Court can interfere. In various matters such as service, family, tax, and customs this Court has consistently restricted the High Court's powers exercised in the constitutional jurisdiction in terms of determining the factual controversy while simultaneously enhancing the domain of the fact-finding forums.

13. In this case, we have examined the writ petition filed by the Petitioner wherein the grounds raised are factual in nature and similar to the grounds raised before this Court, which are also factual in nature. The question urged by the Petitioner before this Court and High Court is whether a case of sexual harassment was made out, which, in our opinion, is based on appreciation of the evidence. So, the factual findings of both for a below cannot be challenged before the High Court. This Court has also held that the closure of litigation is a fundamental principle for fair trial and due process in terms of Article 10-A of the Constitution by creating an effective and efficient legal order, and the courts should not unnecessarily make room for further relitigating issues that may lead to misuse of the law and travesty of justice." (bold added)

26. We have glanced at the evidence and do not find the findings of fact to be perverse and not based on the evidence which would result in an error of law and thus, justified interference. Thus, we decline to look into this matter further in our constitutional jurisdiction.

In conclusion.

1. Based on the particular facts and circumstances of this case we find the doctrine of election to be inapplicable under the Act unless a decision has already been rendered by either the Ombudsman and the Inquiry Committee.
2. We find that the Ombudsman had full power under the Act to remove the appellant/petitioner from service
3. We find that in our constitutional jurisdiction we cannot go into factual controversies and minutely examine the evidence on record.
4. The petition is dismissed and the impugned Orders of the Ombudsman, Governor and Government of Sindh Culture, tourism and Antiquities and Archives department are all upheld and the appellant/petitioner stands removed from service.

5. Before parting with this Order we hereby direct that all organizations as defined in the Act make their inquiry Committees under the Act efficient, effective and speedy and make their findings and recommendations within the time frame given in the Act (namely 30 days from initiation of the Complaint) so that the choice of making a complaint to an Inquiry Committee under the Act does not become an illusory paper right which fails to reach timely decisions in such sensitive matters otherwise the aspect of an Inquiry Committee mentioned in the Act will virtually be rendered redundant.
6. The Government of Sindh shall ensure that all its divisions, departments or other Organizations under its control;
 - (i) bring to the attention of all their workers, employees etc especially female ones the availability and applicability of the Protection Against Harassment of Women at the Workplace Act, 2010;
 - (ii) that they all have functional, effective, efficient and speedy inquiry committees which findings and recommendations meet the time frame given in the Act.
7. The Registrar shall send a copy of this order to the Chief Secretary Government of Sindh who shall ensure compliance with paragraph 6 of the conclusion to this order.
8. The petition stands disposed of in the above terms.