

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before:

Justice Arbab Ali Hakro

Justice Riazat Ali Sahar

C.P No.D-161 of 2024

[*Syed Farhan Ahmed Shah v. Federal Ombudsman Secretariat for Protection against Harassment of Women*]

Petitioner by : M/s Barrister Jawad Ahmed Qureshi and
Osama Yousuf Parhiyar, Advocates

Respondents No.1 & 2 by : Mr. Shamsuddin Rajper, D.A.G a/w Zafar Ali
Channa, Assistant Director, NS, Hyderabad

Respondent No.3 by : Nemo.

Dates of Hearing : **19.02.2026**

Date of Decision : **12.03.2026**

ORDER

ARBAB ALI HAKRO J:- The petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, assailing the Final Order dated 18.01.2024, passed by the Federal Ombudsman Secretariat for Protection against Harassment of Women (**FOSPAH**) in Complaint No. 335 of 2023. The gravamen of the petitioner's challenge is that the impugned order stands vitiated for want of jurisdiction, violation of statutory procedure, non-consideration of material facts and an adjudication rendered in disregard of due process.

2. The factual matrix as culled from the contents of the petition is that the petitioner is serving as an Officer In-charge at the Regional Directorate of National Savings, Hyderabad and asserts that throughout his service, he has discharged his duties with probity and without any complaint. The record reflects that Respondent No. 3, the complainant before FOSPAH, initially came into contact with the petitioner in 2019, when she accompanied her father, an investor at the National Savings Centre, Gurnagar. The petitioner avers that Respondent No. 3 thereafter began exchanging messages with him, which he characterizes as innocuous and unrelated to any allegation of

harassment. It is the petitioner's case that Respondent No.3 initiated a series of complaints before multiple fora. A complaint lodged on 31.05.2022 before the National Savings CRC Support was investigated and closed on 04.06.2022 for want of interest on the part of Respondent No. 3. Subsequently, she approached the Wafaqi Mohtasib on 01.08.2022, but the matter was closed on 27.09.2022 on account of being sub judice in Criminal Misc. Application No. 3394 of 2022, wherein the petitioner had sought legal protection and was granted the same on 24.08.2022. The petitioner further narrates that Respondent No. 3 instituted proceedings under the Domestic Violence (Prevention and Protection) Act, 2013, claiming herself to be the petitioner's wife, an assertion the petitioner vehemently denies. The said complaint was withdrawn by Respondent No. 3 on 24.01.2023. Thereafter, she filed Criminal Misc. Application No. 433 of 2023 seeking registration of an FIR, which too was declined by the learned Additional Sessions Judge on 17.02.2023, inter alia observing that the allegations appeared tainted with malice and lacked substantiation. It is in this backdrop that Respondent No. 3 filed Complaint No. 335 of 2023 before FOSPAH. The petitioner submitted his reply and participated in the proceedings. Evidence from both sides was recorded on 17.08.2023 and 01.09.2023. The petitioner asserts that, without affording an opportunity for final arguments, the Ombudsperson proceeded to impose a major penalty of reduction to a lower post/timescale, along with a fine of Rs.100,000/-, which the petitioner challenges as arbitrary, perverse and unsupported by evidence.

3. Respondent No. 1 has raised a preliminary objection that the petition is not maintainable as the petitioner has failed to avail the statutory remedy of representation before the President of Pakistan under Section 9 of the Protection against Harassment of Women at the Workplace Act, 2010, read with Section 14 of the Federal Ombudsmen Institutional Reforms Act, 2013. It is averred that the constitutional jurisdiction of this Court is barred in view of Section 18 of the 2013 Act. On merits, Respondent No. 1 asserts that the

complaint before the Wafaqi Mohtasib pertained to maladministration, whereas the complaint before FOSPAH pertained to sexual harassment; therefore, the principle of res judicata is inapplicable. It is further stated that the petitioner did not deny the explicit messages placed on record by Respondent No.3, nor did he produce any contrary material. Respondent No. 1 maintains that the petitioner engaged in retaliatory conduct by filing complaints before various authorities during the pendency of the proceedings, which constituted a violation of the Code of Conduct. It is asserted that the impugned order is reasoned, lawful, and based on the preponderance of evidence.

4. Respondent No.2 confirms that the petitioner is an employee of National Savings and that no complaint other than that of Respondent No.3 has ever been reported against him. It is stated that the earlier complaint lodged by the father of Respondent No.3 was investigated and closed as baseless. Respondent No.2 submits that the remaining allegations in the petition do not pertain to it and, therefore, no cause of action is made out against Respondent No.2.

5. Learned counsel for the petitioner contends that the impugned order is *coram non judice*, as FOSPAH lacked jurisdiction to entertain a complaint by a person who was neither an employee nor associated with the workplace in any statutory capacity. It is argued that the Ombudsperson failed to constitute an inquiry committee as mandated under Section 3(2) of the 2010 Act, thereby rendering the proceedings void. Counsel submits that the evidence relied upon was unverified, fabricated and insufficient to meet even the threshold of preponderance of probability. It is further argued that the Ombudsperson acted with manifest bias, ignored material contradictions and imposed a major penalty without cogent reasoning. Learned counsel maintains that the entire proceedings were tainted with procedural impropriety and violation of due process. In support of his contentions, he relied upon case law reported as **PLD 2018 Sindh 581, 2021 PLC (C.S)**

1563, 2022 CLC 1477, 2018 MLD 327, PLD 2018 S.C 828 and an unreported Judgment in writ petition No.1840 of 2019.

6. Conversely, the learned Deputy Attorney General supports the impugned order and reiterates that the petitioner had an efficacious alternate remedy which he failed to exhaust. It is argued that the Ombudsperson exercised jurisdiction strictly in accordance with law, that the complaint fell squarely within the ambit of the 2010 Act, and that the findings were based on the material placed before the forum. Learned DAG submits that no case for interference under Article 199 is made out.

7. Despite service upon Respondent No.3, including publication of notice in the daily Nawai Waqt, none has appeared on her behalf.

8. We have heard the learned counsel for the petitioner and the learned Deputy Attorney General, examined the record with their able assistance and considered the matter in its entirety, including case law relied upon by the counsel for the petitioner.

9. At the outset, it is necessary to delineate the contours of the jurisdiction invoked. The petitioner has approached this Court under Article 199 of the Constitution to challenge the legality, propriety, and jurisdictional competence of the Ombudsperson's final order. While the learned Deputy Attorney General has pressed the objection of alternative remedy under Section 9 of the 2010 Act read with Section 14 of the Federal Ombudsmen Institutional Reforms Act, 2013, it is equally well-settled that the existence of an alternate remedy does not operate as an absolute bar where the impugned action is *ex facie* without jurisdiction, tainted by procedural impropriety or rendered in derogation of mandatory statutory requirements. The supervisory jurisdiction of this Court is not ousted where the impugned order is *prima facie ultra vires* or where the forum below has acted in disregard of the law it is bound to administer.

10. In the present case, the petitioner has raised substantial questions regarding the jurisdictional competence of the Ombudsperson, the procedural regularity of the inquiry, the admissibility and sufficiency of evidence relied upon and the alleged denial of a fair opportunity of hearing. These issues go to the very root of the matter and warrant examination on the constitutional plane.

11. The record reveals that Respondent No.3 is not an employee, intern, trainee, contractual worker, or any category of "**employee**" as defined under Section 2(f) of the 2010 Act. Her father was an investor at the National Savings Centre, and her presence there was incidental to his financial dealings. The statutory definition of "**employee**," even after the 2022 amendments, though expansive, does not encompass a customer's family member who has no contractual, professional or institutional nexus with the organization. The legislative intent behind the Act is to regulate conduct in the workplace between persons who stand in a professional, supervisory, or employment-related relationship.

12. At this juncture, it becomes necessary to interpret Section 2(e) of the 2010 Act, which defines a "**complainant**" as "*any person who has made a complaint to the Ombudsperson or the Inquiry Committee on being aggrieved by an act of harassment.*" Although the phrase "**any person**" appears broad, it cannot be read in isolation. The definitional clauses of the Act must be construed harmoniously with its purpose. The 2010 Act is a workplace-specific remedial statute; its protections are triggered only where the alleged harassment arises within a workplace relationship as contemplated by Sections 2(a), 2(f) and 2(n) of the 2010 Act. A definition cannot be interpreted in a manner that defeats the object of the statute. Thus, the expression "**any person**" must be understood as referring to a person situated within the workplace nexus, whether as an employee, trainee, student, intern or any individual rendering services within the organizational structure. It does not extend to members of the general public who have no employment-related

connection with the organization. A customer's daughter, who neither works at the Centre nor renders any services, does not fall within the statutory scheme. Her mere physical presence at the National Savings Centre does not create the relationship required to invoke the Ombudsperson's jurisdiction. The Ombudsperson's assumption of jurisdiction on this basis constitutes a material misconstruction of the statute.

13. The jurisdictional error is further compounded by the Ombudsperson's reliance on the complainant's presence at the Centre as sufficient to invoke the 2010 Act, whereas the statutory scheme requires a demonstrable workplace relationship, not a mere physical presence.

14. Turning to the procedural dimension, the petitioner has consistently asserted that final arguments were not heard. The Ombudsperson's comments state otherwise, but the record placed before this Court does not contain any contemporaneous order sheet evidencing the hearing of final arguments. Where a penal consequence is contemplated, particularly a major penalty under Section 4(4)(ii) of the 2010 Act, the requirement of affording a meaningful opportunity of hearing is not a mere formality but a constitutional imperative. The absence of a clear record demonstrating compliance with *audi alteram partem* vitiates the proceedings.

15. The evidentiary basis of the impugned order also warrants scrutiny. The Ombudsperson relied heavily on screenshots produced by Respondent No.3. These screenshots were neither accompanied by metadata nor verified by any forensic mechanism. No original device was produced. The petitioner denied authorship of the messages and asserted that they were fabricated. In such circumstances, the Ombudsperson was required, at a minimum, to call for verification under Section 10(ii) of the 2010 Act, which empowers the forum to compel production of evidence. The reliance on unverified digital material, without satisfying the threshold of authenticity, renders the findings speculative.

16. The Ombudsperson further proceeded to draw an adverse inference against the petitioner for not producing "**deleted messages**" This reasoning is legally untenable. The burden of proving harassment rests upon the complainant. The 2010 Act does not invert the burden, nor does it authorize penal consequences on the basis of conjecture. The Ombudsperson's approach, therefore, departs from the statutory standard of preponderance of probability and veers into presumption without proof.

17. The impugned order also traverses matters wholly extraneous to the complaint, including the complainant's dual professions, her enrollment with the Bar Council and her employment with the Sindh Police. These issues were not germane to the determination of harassment, and their inclusion reflects a misapplication of the law. The Ombudsperson's observations on "retaliation" are similarly unsustainable. The petitioner's recourse to lawful remedies before competent fora cannot be construed as retaliation unless shown to be mala fide, vexatious or intended to intimidate. No such finding is supported by evidence.

18. The cumulative effect of these infirmities, lack of jurisdiction, procedural irregularity, reliance on unverified evidence, misapplication of statutory definitions, and consideration of irrelevant material renders the impugned order legally unsustainable. The order does not meet the threshold of reasoned adjudication required of a *quasi-judicial* authority. The reasoning is internally inconsistent, factually assumptive and legally misconceived.

19. We are mindful that allegations of harassment must be adjudicated with sensitivity and seriousness. However, sensitivity cannot supplant legality, nor can the gravity of an allegation justify departure from statutory safeguards. The 2010 Act is a remedial statute, but it is not carte blanche. Its protections operate within defined parameters, and its procedures must be adhered to with fidelity.

22. In the present case, the Ombudsperson acted beyond jurisdiction, failed to apply the statutory framework correctly and rendered a decision unsupported by admissible evidence. The impugned order, therefore, cannot be sustained.

21. For the reasons recorded hereinabove, the impugned Final Order dated 18.01.2024 is declared to be without lawful authority and of no legal effect, and the resultant penalty cannot be sustained. The petition is **allowed** in the above terms. No order as to costs.

JUDGE

JUDGE

Sajjad Ali Jessar