

Present: Umar Ata Bandial, C.J. and Syed Mansoor Ali Shah, J

UZMA NAVEED CHAUDHARY and others---Petitioners

Versus

FEDERATION OF PAKISTAN and others---Respondents

Civil Petitions Nos. 1347 and 1655 of 2019, decided on 27th July, 2022.

(Against the judgment of Islamabad High Court, Islamabad, dated 08.02.2019, passed in Writ Petition No.289 of 2017).

(a) Constitution of Pakistan---

---Art. 199---Constitutional jurisdiction of the High Court---Scope---Interference in findings of fact---High Court cannot interfere, in its constitutional jurisdiction, with findings of fact recorded by the competent courts, tribunals or authorities unless such findings are the result of misreading or non-reading of the material evidence or based on no evidence, which amounts to an error of law and thus justifies, rather calls for, interference.

Mohibullah & Co. v. Bahauddin 1990 SCMR 1070; Mahmooda Begum v. Taj Din 1992 SCMR 809; Muhammad Suleman v. Zubaida Bibi 1996 SCMR 1965; Haider Khan v. Mustareen PLD 2001 SC 207; Lehrasab Khan v. Aqeel-Un-Nisa 2001 SCMR 338; Arshad Mahmood v. Additional District Judge 2001 SCMR 516; Muhammad Sadiq v. Elahi Bakhsh 2006 SCMR 12; Allies Book Corporation v. Sultan Ahmad 2006 SCMR 152; Shajar Islam v. Muhammad Siddique PLD 2007 SC 45; S.L.I.C. v. Jaffar Hussain PLD 2009 SC 194 and Waqar Haider v. JFC 2009 SCMR 1243 ref.

(b) Protection against Harassment of Women at the Workplace Act (IV of 2010)---

---Ss. 8(5) & 9---Conviction and punishment---Reasons provided by the Federal Ombudsperson or President---Reasons for imposing a particular penalty (punishment), after the determination of culpability (conviction), though are distinct and separate from the proof of the allegation (charge), but they need not bear a separate heading or be narrated in a listed or compact form (in the order of the President or Ombudsperson)---Such reasons may, and ordinarily do, form part of the discussion on the overall facts and circumstances of the case.

(c) Protection against Harassment of Women at the Workplace Act (IV of 2010)---

---S. 9---Controller Incharge of Pakistan Television Corporation (PTV) News---Allegation of molesting and sexually harassing female anchorpersons---Minor penalty of censure and payment of compensation imposed by the Federal Ombudsperson---President enhancing said penalty to major penalty of removal from service---Legality---In the facts and circumstances of the case, the enhancement of punishment by the President, of the respondent (accused) who had a previous service record involving moral turpitude and had caused harassment, in the present case, to the female employees working under his supervision and control, at different times, was completely justified for creating a safe working environment for women and for fulfilling the objectives of the Protection against Harassment of Women at the Workplace Act, 2010---High Court had wrongly interfered with and set aside the President's order.

For enhancing the penalty of the respondent, the President had observed that the respondent (accused) was involved in the molestation and harassment of the petitioners (female victims); that the petitioners had no grudge to falsely implicate the respondent in such heinous allegation; that the petitioners were respectable women, working for several years in PTV, and had never lodged any complaint of sexual harassment against any of their colleagues or superiors; that the petitioners were well-educated women and leading happy family lives, and it was not expected from them to level such allegations against the respondent without substance; that the respondent was in habit of using filthy and threatening language for his subordinates and colleagues; that the conduct of the respondent had remained immoral throughout his service career; and that the purpose of punishment was not only reformatory but also creating deterrence against heinous crimes, such as, the sexual harassment at the workplace. High Court in its impugned order failed to appreciate that the President had given due and judicious consideration to the facts and circumstances of the case for enhancing the punishment of the respondent. In view of the said observations of the President, the ground furnished by the High Court for setting aside the President's order was legally not sustainable.

Respondent had meanwhile retired from service and stayed mostly out of the country. In view of this development, and in order to effectively implement the punishment awarded to the respondent and to recover the compensation from the pension of the respondent in case he failed to pay it, Supreme Court converted his punishment from 'removal from service' into 'compulsory retirement' along with payment of Rs.500,000/ as compensation to be paid by him to each of the petitioners, including a pro forma respondent, who was also his victim, to best serve the ends of justice in the present case. Supreme Court directed that amount of compensation shall be recovered from arrears of pay (if any), pension emoluments or any other source (property) of the respondent.

(d) Protection against Harassment of Women at the Workplace Act (IV of 2010)---

---S. 8(1)---Complaint filed before the Ombudsperson---Delay in filing complaints for incidents of harassment---Such delay is not material due to social taboos---Courts, tribunals and authorities concerned must take a lenient view on the delay in filing the complaint by the victim and decide the case on merits.

Delay in lodging complaints for incidents of harassment is understandable. In our social and cultural setting where prevailing notions of family honour and taboos play a dominant role, it is not easy for a woman to speak up about such deeply disturbing incidents. There is also the apprehension of counter allegations hurled against her character by the delinquent. For these and other reasons, many cases of sexual harassment remain unreported. Victims of sexual harassment who exhibit the courage to report the matter against all odds should not, therefore, be turned away on the ground of delay in lodging the complaint. The courts, tribunals and authorities concerned must take a lenient view on the delay in filing the complaint by the victim and decide the case on merits. This will encourage victims to come forward to seek justice. The principle enunciated by the Supreme Court in several criminal cases involving sexual assault, that delay in reporting the incident to the police in such cases is not material, equally applies to the complaints of sexual harassment made under the Protection against Harassment of Women at the Workplace Act, 2010.

Irfan Ali v. State PLD 2020 SC 295; Zahid v. State 2020 SCMR 590; Nasreen Bibi v. Farrukh Shahzad 2015 SCMR 825; Yasmin v. Majid 2008 SCMR 1602; Muhammad Abbas v. State PLD 2003 SC 863; Mehboob Ahmad v. State 1999 SCMR 1102 and Nasreen v. Fayyaz Khan PLD 1991 SC 412 ref.

(e) Protection against Harassment of Women at the Workplace Act (IV of 2010)---

---Preamble---Constitution of Pakistan, Art. 34---Objectives of the Protection against Harassment of Women at the Workplace Act 2010, highlighted.

As evident from its Statement of Objects and Reasons, Preamble and substantive provisions, the objective of the Protection against Harassment of Women at the Workplace Act, 2010 ('the Act') is to actualize the right of women to join a profession or occupation of their choice, where they are treated as an equal with dignity and honour, and feel safe that their working environment is free of harassment, abuse and intimidation. The Act gives effect to Article 34 of the Constitution which provides that "steps shall be taken to ensure full participation of women in all spheres of national life". The Act opens pathways for women to participate more fully in the development of the country at all levels, and ensures equal opportunity for them to earn their livelihood in a safe working environment. The Act also promotes the standards set by international commitments of Pakistan under the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the ILO Discrimination (Employment and Occupation) Convention.

(f) Protection against Harassment of Women at the Workplace Act (IV of 2010)---

---S. 2(h)(ii) [as substituted by the Protection against Harassment of Women at the Workplace (Amendment) Act (V of 2022)]---Harassment---Scope---Gender-based discrimination---Any conduct that is rooted in gender-based discrimination and creates an abusive and hostile working environment is harassment under the Protection against Harassment of Women at the Workplace Act, 2010, which is not restricted only to conduct that is related to the act of sex---Many forms of pervasive harassment in the workplace, including denial of equal opportunities as well criticism of one's abilities on the basis of gender, also comes within the ambit of harassment.

(g) Protection against Harassment of Women at the Workplace Act (IV of 2010)---

---S. 2(e) [as substituted by the Protection against Harassment of Women at the Workplace (Amendment) Act (V of 2022)]---Transgender person---Scope of the Protection against Harassment of Women at the Workplace Act, 2010 is not restricted to women only but it protects everyone - male, female and transgender persons.

(h) Protection against Harassment of Women at the Workplace Act (IV of 2010)---

---Preamble---Constitution of Pakistan, Arts. 9, 14, 18 & 25---Constitutional foundations of rights to 'gender equality' and 'safe working environment', explained.

Viewing the Protection against Harassment of Women at the Workplace Act, 2010 ('the Act') on a constitutional plane, the right to a safe working environment for all genders including male, female and transgender, free of harassment, abuse and intimidation draws its real strength from the fundamental rights guaranteed under the Constitution: right to life includes the right to livelihood, and thus assumes the right to a safe working environment for everyone, especially women, for earning such a livelihood; intimidating, hostile, abusive and offensive workplace environment offends the right to livelihood and the right to life of a person; right to liberty includes the right to agency, choice and freedom to join any profession or occupation of one's choice; right to enter upon any lawful profession or occupation, carries an inbuilt protection to make and execute such a choice. Any act of harassment done by any person that affects the free choice to enter and continue any lawful profession or occupation would amount to threatening the safety of the working environment. Only a safe working environment meets the constitutional standard of fundamental rights guaranteed under Articles 9 and 18 of the Constitution. These rights read with the rights to dignity, equality and protection against discrimination on the basis of sex under Articles 14 and 25 construct the constitutional foundations of 'gender equality' which ensures safe working environment for all genders, free from all forms of harassment, including sexual harassment.

Province of Punjab v. Kanwal Rashid 2021 SCMR 730; Imran Sajid v. Managing Director 2015 SCMR 1257; Abdul Wahab v. HBL 2013 SCMR 1383; SMC No.13 of 2009 PLD 2011 SC 619 and Abid Iqbal v. Secretary Prosecution PLD 2010 SC 841 ref.

(i) Constitution of Pakistan---

---Art. 14---Right to dignity---Meaning and scope of right to 'dignity', stated.

Dignity is an inherent and inseparable right of a human being and has thus been guaranteed by the Constitution as an absolute, non-negotiable and inviolable fundamental right that is not subject to any qualification, restriction or regulation. Dignity values the worth of each person and requires the recognition of each person's worth to be held in equal measure for all. It is harmed when individuals are marginalized, ignored or devalued, and is enhanced when the full place of all individuals within the society is recognized. The universal value of human dignity provides that "all human beings are born free and equal in dignity and rights. It shuns patriarchy, misogyny and the age-old archaic and dogmatic social norms, and nurtures progressive and forward-looking constitutional ideals of liberty, equality and social justice.

Erin Daly et al, Dignity law: Global Recognition, Cases, and Perspectives (2020) p. 191; Law v. Canada (Minister of Employment and Immigration) [1999] 1 SCR 497 and The Universal Declaration of Human Rights 1948, Article 1 ref.

Sardar M. Ashfaq Abbasi, Advocate Supreme Court for Petitioners (in C.P. No.1655 of 2019).

Dr. G.M. Chaudhary, Advocate Supreme Court, Syed Rifaqat Hussain Shah, Advocate-on-Record for Petitioner (in C.P. No.1347 of 2019).

Nazir Jawwad, Advocate Supreme Court for PTV.

Date of hearing: 27th July, 2022.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---"Our lives begin to end the day we become silent about things that matter."¹ In this case, a few brave women decided to break the silence by coming forward to speak up about sexual harassment they faced at their workplace, praying that the perpetrator be taken to task. This reminds us of our celebrated revolutionary poet, Faiz, who said: "Speak, for your lips are free; Speak, your tongue is still yours, Your upright body is yours-Speak, your life is still yours."²

2. Briefly stated, the facts of the case are that Ms. Uzma Naveed Chaudhary and four other female anchorpersons of PTV ("Petitioners")³ lodged a complaint, on 15.06.2016, against Mr. Ather Buttar ("Respondent"), the Controller Incharge of the PTV News Centre Islamabad, under the Protection against Harassment of Women at Workplace Act, 2010 ("Act"), before the Federal Ombudsman. They alleged in the complaint that the respondent had been continuously harassing them individually at their workplace over a long period of time. The alleged sexual advances made to the petitioners included comments and acts like: she is looking hot and offering her to book a room in a hotel, winking at her and making indecent gestures, sending a phone message expressing his love for her, visiting her at her house uninvited, asking her out for dinner and upon her refusal threatening her to suffer the consequences, promising to make her a star if she would have friendship with him, and attempting physical assault on her in his office.

3. The respondent filed his written reply to the complaint, denying the allegations levelled against him. The Federal Ombudsman, after recording evidence of both the parties, held the respondent liable for harassing the petitioners and by allowing the complaint, imposed upon him the minor penalties of censure and payment of compensation Rs.250,000/- to the petitioners, vide her decision dated 20.10.2016.

4. Both the petitioners and the respondent filed their representations to the President of Pakistan against the decision of the Federal Ombudsman: the petitioners prayed for enhancement of the punishment and the respondent, for his exoneration from the allegations. The President rejected the representation of the respondent and accepted that of the petitioners, vide his order dated 30.12.2016, and thereby modified and converted the punishment of the respondent into that of major penalty of removal from service instead of the minor penalties imposed by the Federal Ombudsman.

5. The respondent challenged the order of the President before the Islamabad High Court by invoking its constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 ("Constitution") through a writ petition. The High Court partially accepted the writ petition of the respondent, and set aside the order of the President but maintained the decision of the Federal Ombudsman, vide the impugned judgment. Hence, the present petitions have been filed by both the petitioners and the respondent. The petitioners pray for restoration of the order of the President and the respondent, for setting aside the decision of the Federal Ombudsman.

6. We have heard the learned counsel for the parties at some length and with their able assistance have perused the record of the case.

7. We have gone through the decision of the Federal Ombudsman and the order of the President, and found that both have minutely examined and thoroughly discussed the evidence of the parties. We find no misreading or non-reading of any material evidence of the parties that could have constituted an error of law to justify interference with the said findings of facts by the High Court in its constitutional jurisdiction. Needless to state that a High Court cannot interfere, in its constitutional jurisdiction, with findings of fact recorded by the competent courts, tribunals or authorities unless such findings are the result of misreading or non-reading of the material evidence or based on no evidence, which amounts to an error of law and thus justifies, rather calls for, interference.⁴ In absence of any misreading or non-reading of the material evidence, the High Court has rightly not interfered with the concurrent findings of facts recorded by the Federal Ombudsman and the President, regarding the culpability of the respondent.

8. However, we find that the observation of the High Court for setting aside the order of the President as to the enhancement of the punishment, on the ground that no reason was provided by the President for enhancing the punishment, is against the record. The High Court has quoted para 28 of the order of the President in the impugned judgment, which is the operative part of the order, and has missed to note that para 27 thereof contains: (i) the discussion on the evidence of the parties for confirming the finding of fact as to the culpability of the respondent, and (ii) the reasons for enhancement of the punishment. As the High Court has maintained the concurrent findings of facts recorded by the Ombudsman and the President on the culpability of the respondent, we do not find it necessary to rediscuss and reappraise the evidence of the petitioners. The reasons for imposing a particular penalty (punishment), after the determination of culpability (conviction), though are distinct and separate from the proof of the allegation (charge), but they need not bear a separate heading or be

narrated in a listed or compact form. Such reasons may, and ordinarily do, form part of the discussion on the overall facts and circumstances of the case, as has been done by the President in the present case in para 27 of his order. For enhancing the penalty of the respondent, the President has observed that the respondent was involved in the molestation and harassment of the petitioners; that the petitioners have no grudge to falsely implicate the respondent in such heinous allegation; that the petitioners are respectable women, working for several years in PTV, and have never lodged any complaint of sexual harassment against any of their colleagues or superiors; that the petitioners are well-educated women and leading happy family lives, and it is not expected from them to level such allegations against the respondent without substance; that the respondent was in habit of using the filthy and threatening language for his subordinates and colleagues; that the conduct of the respondent has remained immoral throughout his service career; and that the purpose of punishment is not only reformatory but also creating deterrence against heinous crimes, such as, the sexual harassment at the workplace. The High Court has failed to appreciate that the President has given due and judicious consideration to the facts and circumstances of the case for enhancing the punishment of the respondent. In view of the said observations of the President, the ground furnished by the High Court for setting aside the President's order is found legally not sustainable.

9. So far as the objection of the respondent that there is a long delay in lodging the complaint by the petitioners against him after the alleged incidents of harassment is concerned, the President has rightly rejected the same and observed that delay in such cases is understandable. In our social and cultural setting where prevailing notions of family honour and taboos play a dominant role, it is not easy for a woman to speak up about such deeply disturbing incidents. There is also the apprehension of counter allegations hurled against her character by the delinquent. For these and other reasons, many cases of sexual harassment remain unreported. Victims of sexual harassment who exhibit the courage to report the matter against all odds should not, therefore, be turned away on the ground of delay in lodging the complaint. The courts, tribunals and authorities concerned must take a lenient view on the delay in filing the complaint by the victim and decide the case on merits. This will encourage victims to come forward to seek justice. The principle enunciated by this Court in several criminal cases⁵ involving sexual assault, that delay in reporting the incident to the police in such cases is not material, equally applies to the complaints of sexual harassment made under the Act.

10. As evident from its Statement of Objects and Reasons, Preamble and substantive provisions, the objective of the Act is to actualize the right of women to join a profession or occupation of their choice, where they are treated as an equal with dignity and honour, and feel safe that their working environment is free of harassment, abuse and intimidation. The Act gives effect to Article 34 of the Principles of Policy under our Constitution which provides that "steps shall be taken to ensure full participation of women in all spheres of national life". The Act opens pathways for women to participate more fully in the development of the country at all levels, and ensures equal opportunity for them to earn their livelihood in a safe working environment. The Act also promotes the standards set by international commitments of Pakistan under the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the ILO Discrimination (Employment and Occupation) Convention.

11. Lately, the Parliament of Pakistan has further enlarged the scope of the Act, to realize its objective more effectively, by enacting the Protection against Harassment of Women at the Workplace (Amendment) Act 2022 ("Amendment Act"). The Amendment Act has extended the application of the Act by adding in the definition of "employee" the informal workers without a contract, freelancers, domestic workers, interns, trainees, apprentices, students, performers, artists, sportspersons, etc., and by extending the definition of "workplace" to anyplace where services are rendered or performed by professionals, including educational institutions, gigs, concerts, studios, performance facilities, courts, highways, sporting facilities, gymnasiums etc. The Amendment Act has also redefined the expression "harassment" and has included therein "discrimination on the basis of gender, which may or may not be sexual in nature, but which may embody a discriminatory and prejudicial mindset or notion, resulting in discriminatory behavior on basis of gender against the complainant". Although it is evident from the words, "demeaning attitude", that the expression "sexually demeaning attitude"

used in the definition of "harassment" means demeaning attitude on the basis of sex, the Amendment Act has further clarified it by providing that it includes "any gesture or expression conveying derogatory connotation" that causes "interference with work performance or creating an intimidating, hostile or offensive work environment", and covers conduct that discriminates against persons because of their gender and creates an intimidating or hostile working environment. Any conduct that is rooted in gender-based discrimination and creates an abusive and hostile working environment is harassment under the Act, which is not restricted only to conduct that is related to the act of sex. Many forms of pervasive harassment in the workplace, including denial of equal opportunities as well criticism of one's abilities on the basis of gender, also comes within the ambit of harassment.

12. The Amendment Act has substituted the expression "a woman or man" with "any person" in the definition of "complainant" and has thus made applicable the protection of the Act to transgender persons also. The scope of the Act is not restricted to women only but it protects everyone - male, female and transgender persons. This change in the Act is commendable, as it would now extend the protection to transgender persons also, who are often the most vulnerable to different forms of harassment. The amendments introduced in the Act, we hope, would play an important role to realize the constitutional ideals and values of liberty, dignity, equality and social justice for women and transgender persons in Pakistan.⁶

13. Viewing the Act on a constitutional plane, we note that the right to a safe working environment for all genders including male, female and transgender, free of harassment, abuse and intimidation draws its real strength from the fundamental rights guaranteed under the Constitution: right to life includes the right to livelihood,⁷ and thus assumes the right to a safe working environment for everyone, especially women, for earning such a livelihood; intimidating, hostile, abusive and offensive workplace environment offends the right to livelihood and the right to life of a person; right to liberty includes the right to agency, choice and freedom to join any profession or occupation of one's choice; right to enter upon any lawful profession or occupation, carries an inbuilt protection to make and execute such a choice. Any act of harassment done by any person that affects the free choice to enter and continue any lawful profession or occupation would amount to threatening the safety of the working environment. Only a safe working environment meets the constitutional standard of fundamental rights guaranteed under Articles 9 and 18 of the Constitution. These rights read with the rights to dignity, equality and protection against discrimination on the basis of sex under Articles 14 and 25 construct the constitutional foundations of 'gender equality' which ensures safe working environment for all genders, free from all forms of harassment, including sexual harassment.

14. It is underlined that dignity is an inherent and inseparable right of a human being and has thus been guaranteed by our Constitution as an absolute, non-negotiable and inviolable fundamental right that is not subject to any qualification, restriction or regulation.⁸ Dignity values the worth of each person and requires the recognition of each person's worth to be held in equal measure for all.⁹ It is harmed when individuals are marginalized, ignored or devalued, and is enhanced when the full place of all individuals within the society is recognized.¹⁰ The right to dignity under Article 14 and the construct of "gender equality" turns "sexual harassment" on its head and buries it deep underground. The universal value of human dignity provides that "all human beings are born free and equal in dignity and rights."¹¹ It shuns patriarchy, misogyny and the age-old archaic and dogmatic social norms, and nurtures progressive and forward-looking constitutional ideals of liberty, equality and social justice. It is time to bid farewell to gender biases and prejudices, and pave the way towards the actualization of these robust and unwavering constitutional ideals and values by embracing the participation of women in all spheres of life with honour and dignity. "No nation can rise to the height of glory", in the words of the Founder of our Nation, Muhammed Ali Jinnah, "unless your women are side by side with you. We are victims of evil customs. It is a crime against humanity that our women are shut up within the four walls of the houses as prisoners. There is no sanction anywhere for the deplorable condition in which our women have to live."¹²

15. Reverting to the merits of the present case, we find that in the facts and circumstances of the case, the enhancement of punishment by the President, of the respondent who had a previous service record involving moral turpitude and had caused harassment, in the present case, to the female employees working under his

supervision and control, at different times, was completely justified for creating a safe working environment for women and for fulfilling the objectives of the Act. The High Court has wrongly interfered with and set aside the President's order. We have also been informed that the respondent has meanwhile retired from service and stays mostly out of the country (currently, in Canada). In view of this development, and in order to effectively implement the punishment awarded to the respondent and to recover the compensation from the pension of the respondent in case he fails to pay it, we convert his punishment from 'removal from service' into 'compulsory retirement' along with payment of Rs.500,000/ as compensation to be paid by him to each of the petitioners including Ms. Qurat-ul-Ain, the pro forma respondent No.6, to best serve the ends of justice in the present case.

16. We, therefore, convert the Civil Petition No.1655/2019 of the petitioners into appeal and allow the same in the said terms, by setting aside the impugned judgment of the High Court, while the Civil Petition No.1347/2019 of the respondent is dismissed. The amount of compensation shall be recovered from arrears of pay (if any), pension emoluments or any other source (property) of the respondent as per section 4(i)(d) of the Act.

MWA/U-1/SC Order accordingly.