

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Syed Hasan Azhar Rizvi, JJ**Prof. Dr. MANZOOR HUSSAIN and others---Petitioners****Versus****ZUBAIDA CHAUDHRY and others---Respondents**

Civil Petition No. 1942 of 2022, decided on 26th May, 2023.

(Against the judgment dated 03.03.2022, passed by the Islamabad High Court, Islamabad in W.P. No. 3563 of 2017)

Federal Ombudsmen Institutional Reforms Act (XIV of 2013)---

---S. 14(4)---Federal Ombudsmen Institutional Reforms (Processing of Representations) Rules, 2014, Rr. 2(1)(b) & 8(3)---Officer nominated by the President under section 14(4) of the Federal Ombudsmen Institutional Reforms Act, 2013, powers of---Such officer only processes the representations filed before the President---Decision-making powers of the President are not delegated to the said officer as the final decision on the representation is taken only by the President.

The nominated officer under section 14(4) of the Federal Ombudsmen Institutional Reforms Act, 2013 ('the Act') only processes the representation before sending the case to the President for his decision. Processing the representation comprises of the actions or steps towards achieving the required objective i.e. a decision on the representation by the President. The views so expressed by the nominated officer in the form of recommendations/proposals form part of the procedure to process the representation before the case is sent to the President and the final decision thereon is taken only by the President.

President is specifically authorized to nominate an officer to process a representation by preparing the case and giving his/her views on the said representation, which are likely to be only in the shape of recommendations/proposals, and in no manner can it be stated that the nominated officer is deciding the representation. The case is then placed before the President for decision thereon and the power to decide the representation resides solely with and is exercised only by the President after due application of mind.

Power to process a representation, by preparing the case, and the power to decide that representation, after due application of mind, are inherently distinct functions and cannot be equated or conflated. The function of processing a representation by the nominated officer is only ancillary to the main objective of decision on the representation by the President.

For practical purposes, the role of the nominated officer is only to consolidate and simplify the record, and prepare the case before him so that it can be presented before the President for his decision. This in no manner dilutes the decision-making powers of the President because the discretion to accept or reject a representation is retained and vested entirely in the President himself, who, while deciding the representation, may agree with the recommendations/proposals so forwarded by the nominated officer, by adopting the reasons given by the nominated officer and/or also for his own reasons, or disagree with them for his own reasons and decide the representation after assessing the available record and independently applying his mind to the matter. Consequently, the power of the President to decide the representation himself remains intact and cannot be said to have been delegated to any other officer nominated by him under section 14(4) of the Act.

United Woollen Mills Ltd. Workers' Union v. United Woollen Mills 2010 SCMR 1475; Mollah Ejahar v. Government of East Pakistan PLD 1970 SC 173; Gouranga v. The Controller of Import and Export PLD 1970 SC 158; Government of Pakistan v. Farheen 2009 PLC (C.S.) 966 and Razia Jafar v. Government of Balochistan 2007 SCMR 1256 ref.

Sabir Hussain Tanoli, Advocate Supreme Court along with Muhammad Zahid, Assistant Registrar for Petitioners.

Respondent No. 1 in person along with Ruqia Samee, Advocate Supreme Court.

Raja Shafqat Abbasi, D.A.G. and Muhammad Saleem, Dir. Legal (President House) for Government of Pakistan.

Assisted by Muhammad Hassan Ali, Law Clerk, Supreme Court.

Date of hearing: 26th May, 2023.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---The matter involved in the instant case is with regards to the interpretation of section 14(4) of the Federal Ombudsmen Institutional Reforms Act, 2013 ("Act of 2013"), which provides that a representation made to the President shall be "processed" in the office of the President by a person who has been or is qualified to be a Judge of the Supreme Court or has been a Wafaqi Mohtasib or Federal Tax Ombudsman. This raises the question whether, in the absence of any specific power to delegate decision-making powers of the President under the Act of 2013, the word "processed" means that the decision-making powers of the President have been delegated to the said officer under section 14(4) and the President stands divested of the said powers.

2. Briefly, the facts of the case are that respondent No. 1, an Associate Professor of Botany at the Hazara University, Mansehra, alleged harassment at her workplace by the petitioners. After her departmental complaint was not processed, she filed a complaint before the Federal Ombudsman under section 8(1) of the Protection against Harassment of Women at the Workplace Act, 2010 ("Act of 2010"). The complaint was allowed on 20.03.2017 by imposing a minor penalty of censure on the petitioners along with a fine of Rs. 1,00,000/- each payable by the petitioners to respondent No.1. Against the said order of the Ombudsman, petitioners Nos. 2 and 3, and respondent No.1 filed their respective representations before the President under section 9 of the Act of 2010, with the former seeking setting aside of the order of the Ombudsman and the latter seeking enhancement of the minor penalties to major penalties. Vide order dated 17.07.2017, the President accepted the representations of the petitioners and dismissed the representation of respondent No. 1. Respondent No. 1 then filed a writ petition before the High Court assailing the order of the President. The writ petition was disposed of vide the impugned judgment dated 03.03.2022 whereby, without adverting to the merits of the case, it was held that the President could not have delegated his decision-making authority to any other person or official, therefore, the order of the President dated 17.07.2017 was set aside and the matter was remanded with the directions that after the representation has been processed, it shall be placed before the President for his consideration and decision.

3. We have heard the learned counsel for the parties and respondent No.1 in person, and have perused the record with their able assistance. We have noted that the representations made to the President were processed by the Consultant (Legal Affairs), who forwarded the case, along with his recommendation/proposal regarding the representations, to the President on 06.06.2017 for decision of the President. Thereafter, the President, after examining the recommendation/proposal and the record of the case, approved the said recommendation/proposal on 13.07.2017, thereby, deciding the representations by accepting the representations of the petitioners and dismissing the representation filed by respondent No. 1, which was communicated to the parties vide order dated 17.07.2017.

4. We have gone through section 14 of the Act of 2013. Section 14(1) stipulates that any person aggrieved by a decision, order, findings or recommendations of an Ombudsman may file a representation to the President within 30 days of the decision, order, findings or recommendations. Section 14(4) of the Act of 2013 provides that the representation shall be "processed" in the office of the President by a person who had been or is qualified to be a Judge of the Supreme Court or has been a Wafaqi Mohtasib or Federal Tax Ombudsman. For the purposes of "processing" representations, as provided for under section 14(4) of the Act of 2013, the Federal Government has notified the Federal Ombudsmen Institutional Reforms (Processing of Representations) Rules, 2014 ("Rules") which stipulate the procedure of processing a representation.¹

5. Under Rule 3(1) of the Rules, a person who fulfills the conditions provided in section 14(4) of the Act of 2013 and is nominated by the President as such, shall process the representations. Rule 4 provides that this nominated officer may authorize an officer from amongst his supporting staff to correspond with the offices of the Federal Ombudsman and agencies, complainants and other organizations for processing representations, including summoning of record, inviting comments, communicating the decision of the President and other allied matters.² Under Rule 6, this authorized officer shall summon the relevant record

from the concerned office of the Ombudsman, which includes the complaint, reply thereto etc. Under Rule 7(1), the authorized officer shall provide a copy of the representation with annexures, if any, to the other party, inviting its comments thereon. Rule 7(2) provides that where no such comments are received, the matter shall be processed and decided on the basis of the available record. Therefore, the above rules indicate that before the representation is processed, it is initially dealt with on the administrative side.

6. Rule 8(1) then provides that on receipt of the record, the authorized officer shall pass on the same to the nominated officer for processing the representation. Under Rule 8(2), the nominated officer may seek assistance from experts and other officers to reach at the right conclusion for decision on merit by the President. Importantly, Rule 8(3) stipulates that after processing the representation, the nominated officer shall, "expressing his views" thereon, send the case to the Secretary to the President for decision by the President. As per the language of the Rule 8(3), it is mandatory on the nominated officer to express his views on the representation, which naturally would include the reasons upon which the said views are based. Rule 9(1) then further fortifies that the Secretary to the President shall then place the case before the President "for his decision" under the Act of 2013 and the relevant legislation.

7. In view of the above, it is apparent that the nominated officer only processes the representation before sending the case to the President for his decision. "Process" is defined as "a series of actions or steps towards achieving a particular end"³ or "a mode, method, or operation, whereby a result or effect is produced"⁴. Processing the representation therefore comprises of the actions or steps towards achieving the required objective i.e. a decision on the representation by the President. The views so expressed by the nominated officer in the form of recommendations/proposals form part of the procedure to process the representation before the case is sent to the President and the final decision thereon is taken only by the President. For this purpose, even though not being necessary, the President may also give a personal hearing to the parties, if required, as can be inferred from section 15 of the Act of 2013.

8. It is important to note that the power to process a representation, by preparing the case, and the power to decide that representation, after due application of mind, are inherently distinct functions and cannot be equated or conflated. The function of processing a representation by the nominated officer is only ancillary to the main objective of decision on the representation by the President. According to De Smith's Judicial Review⁵, Courts have even conceded that an authority has an implied power to entrust to a group of its own members with the authority to investigate, to hear evidence and make recommendations in a report, provided that (a) it retains the power to make decisions in its own hands⁶ and receives a report full enough to enable it to comply with its duty to "hear" before deciding, and (b) the context does not indicate that it must perform the entire adjudicatory process itself. Where there are express statutory provisions to this effect, the Court has to consider whether the Minister or Governor or, as in this case, the President, had to act "judicially" in some respect and has failed to do so. The respect in which he has to observe judicial procedure or act judicially will depend on the statutory or other provisions under which the matter arises.⁷ For the purposes of the question raised in the instant matter, it is apparent from the provisions noted above that the President is specifically authorized to nominate an officer to process a representation by preparing the case and giving his/her views on the said representation, which are likely to be only in the shape of recommendations/ proposals, as in the instant case, and in no manner can it be stated that the nominated officer is deciding the representation. The case is then placed before the President for decision thereon and the power to decide the representation resides solely with and is exercised only by the President after due application of mind.

9. It is also evident that the object of the requirement of the nominated officer, a person of high legal standing who has acted or is qualified to act in a judicial or quasi-judicial capacity, to process the representation, which might involve significant substantive and technical legal questions, and to express his views on the said representation before sending the case to the President for decision thereon, is only to assist the President in deciding the representation. The President may or may not be a person with a legal background⁸ and, along with deciding representations filed under other diverse laws,⁹ has various other overbearing and important functions and duties as head of State, which include the functions, powers and duties of the President under the Constitution¹⁰, and under other laws.¹¹ As such, in view of the demanding

and arduous position that the President holds, and, therefore, for practical purposes, the role of the nominated officer is only to consolidate and simplify the record, and prepare the case before him so that it can be presented before the President for his decision. This in no manner dilutes the decision-making powers of the President because the discretion to accept or reject a representation is retained and vested entirely in the President himself, who, while deciding the representation, may agree with the recommendations/ proposals so forwarded by the nominated officer, by adopting the reasons given by the nominated officer and/or also for his own reasons, or disagree with them for his own reasons and decide the representation after assessing the available record and independently applying his mind to the matter.

10. To this effect, two decisions of the President have also been placed on the record for reference purposes by the representative of the President's office. In the first decision¹² the President had disagreed with the recommendations of the nominated officer, gave a personal hearing to the parties, and decided the representations giving detailed reasons for the same. The second decision¹³ indicates that even though the President had agreed with the recommendations of the nominated officer, he also gave his own reasons for deciding the representation in the said manner, indicating due application of mind while deciding the matter. As such, it is apparent that even though the views of the nominated officer in the form of such recommendations/proposals may assist the President in coming to a decision regarding the representation, however, it is only the President who decides the representation after conscious application of independent mind on the strength of tangible and material evidence, as is required under the law.¹⁴ Consequently, the power of the President to decide the representation himself remains intact and cannot be said to have been delegated to any other officer nominated by him under section 14(4) of the Act of 2013.

11. In view of the above, we cannot agree with the High Court that the processing of the representation, as provided under section 14(4) of the Act of 2013 and supplemented and explained through the Rules, amounts to delegation of the decision-making powers of the President while deciding a representation. Therefore, the impugned judgment, having failed to take into account the provisions mentioned above, and premised on the ground that the representation had been decided by the nominated officer, who had processed the representation, instead of the President, cannot be sustained.

12. Resultantly, this petition is converted into an appeal and is disposed of in the terms that the impugned judgment is set aside and the matter is remanded to the High Court to decide the writ petition of respondent No.1 on merits.

MWA/M-26/SC

Order accordingly.