**JUDGMENT SHEET**
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**
**JUDICIAL DEPARTMENT**

**Writ Petition No.842 of 2021**
Muhammad Tabassum
**Versus**
President of the Islamic Republic of Pakistan & 2 others
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| Petitioner By | : | Mr.Taimoor Aslam Khan, Advocate |
| Respondents By | : | Mr.Shehryar Gondal, Advocate.<br>Mr. Khalid Mahmood Dhoon, A.A.G. |
| Date of Hearing | : | 21.09.2022 |

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**ARBAB MUHAMMAD TAHIR, J**: Through the instant writ petition, petitioner namely *Muhammad Tabassum* impugns orders dated 03.11.2020 and 16.02.2021, passed by the *President, Islamic Republic of Pakistan* and *the Federal Ombudsman for Protection Against Harassment of Women at Work Place***('learned respondents 1 and 2'),** being *corum non judice, void abinito, without jurisdiction having no legal effect.* In-addition, also prays to declare the complaint, filed by the respondent No.3 namely *Ms Sumera Yousaf* out of the ambit of the *Harassment of Women at Work Place Act, 2010***('Act of 2010').**

2. Tersely, relevant facts are that on 29.10.2018respondent No.3 submitted an application to the Chief Accounts Officer, Ministry of Foreign Affairs Islamabadagainst the petitioner on the allegations of harassment at workplace On the said application, an Inquiry Committee comprising three members was formed on 30.10.2018 to rendered its findings on the following terms:-

> *"**Terms of references.***
> *To record its findings in regard to the application submitted by Ms. Sumaira Yousaf (Junior Auditor, AC-II section) against Mr. Muhammad Tabassum (Senior Auditor, Computer Section), to find whether Mr. Muhammad Tabassum leaked her pictures and tried to blackmail/harassed Ms. Sumaia Yousaf."*

3. The Committee conducted full-fledged inquiry wherein besides recording statement of respondent No.3 and the petitioner; statements of other witnesses were also recorded. After completion of proceedings, the Committee concluded as under:-

> *"1. It is found and proved that Mr. Tabassum is guilty of misconduct as he did not inform the competent authority immediately about the leakage of data. He approached the concerned applicant directly and tried to keep the matter confidential. He did not satisfactorily justify his action upon inquiry.* ***This action is against the term of efficiency and discipline rules****.*
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> *2. As per statement of Mr. Muhammad Tabassum, the pictures were leaked due to Trogen or Russian virus, but after the recovery of data, Ms. Sumaira's pictures were found in a hidden folder which was accessed and modified on 26.10.2018. In the light of Technical assistance taken from the Network Administrator, it is proved that the presence of pictures in Ms. Maleeha's system is the result of human action and not due to the attack of any virus. The reason is that the virus does not attach any individual folder and it also leaves some footprints after his attack on the system. However, no such footprints were found in the system.*
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> *3. Due to the absence of CCTV cameras in the rooms of CAO office, the committee could not decide anything about the direct and active involvement of Mr. Tabassum in the modification or manipulation of data in the systems of Audit-II Section."*

4. The petitioner then served with a notice on 10.01.2019 to furnish his explanation, which was responded on 15.01.2019. The formal charge sheet was framed on 07.02.2019 and on the same day, petitioner was served with statement of allegations. The reply to the charge sheet and statement of allegations was furnished by the petitioner vide letter dated 22.02.2019. Mr. Muhammad Touseef Khawar Accounts Officer was appointed as an Inquiry Officer. On completion of Inquiry, the findings were forwarded to the Deputy Chief Accounts Officer, Competent Authority/Authorized Officer. The petitioner was served with show cause notice for proceedings against him under the *Government Servants (Efficiency & Discipline) Rules 1973* ('**Rules of 1973'**).

5. On conclusion of disciplinary proceedings under the Rules of 1973, the petitioner was awarded *minor penalty of withholding of two annual increments* being guilty of misconduct vide order dated

05.04.2019. The respondent No.3 assailed the said order before learned respondent No.2 by filing an appeal under Section 6 of Act of 2010. The appeal was entertained by the learned respondent No.2 and notices were ordered to be issued to the petitioner for 14.05.2019 by observing as under:-

> *"The complainant further requested to convert her complaint into an appeal. She contended that she filed a complaint under section 6 of the Protection Against Harassment Act, 2010, however, the committee entertained the instant complaint under disciplinary proceedings."*

6. The learned respondent No.2 decided the appeal vide Judgment dated 03.11.2020 in following terms:-

> *"In view of what has been discussed above i hold that the accused Muhammad Tabassum has been guilty of the charge of causing harassment to the complainant Sumera Yousaf in terms of Protection against Harassment of Women at the Workplace Act 2010 and is liable to be imposed penalty under sub section 4 of section 4 of the Act, 2010. While accepting the appeal/complaint of Sumera Yousaf I enhance the penalty of the accused Muhammad Tabassum from withholding of two increment to reduction to lower post within the meaning of subsection 4(ii)(a) as a major penalty alongwith fine of Rs. 2 lacs to be paid as compensation to complainant/appellant."*

7. The *penalty of withholding of two annual increments was enhanced to reduction to lower post alongwith fine of Rs. 2 lacs to be paid to the petitioner as compensation to respondent No.*3.The petitioner assailed the above order before the learned respondent No.1, who, vide order dated 16.02.2021, remanded the matter to learned respondent No.2 in following terms:-

> *"In view of the above, the impugned order suffers from legal infirmity and is not sustainable in the eye of law. Any other observation on the matter is likely to prejudice the merits of the case which is thus refrained. It is deemed appropriate to remit the matter to the learned Ombudsmen for its decision afresh in accordance with Section 6(3) of the Act 2010 without being influenced by earlier findings."*

8. Learned counsel argued that the inquiry against the petitioner was conducted under the Rules of 1973 and not under the Act of 2010; that

the respondent No.3 in case of any grievance may prefer an appeal before the competent authority under the Rules of 1973 instead to file an appeal under Section 6 of the Act of 2010. The learned counsel prayed to declare the impugned proceedings as *coram non judice* and without lawful authority. Learned counsel relied upon **PLD 2021 Supreme Court 784, PLD 2021 Lahore 24,**and **2020 PLC (C.S) 186**.

9. On the other hand, learned counsel for respondent No.3 argued that the Act of 2010 is a special law and where a complainant is aggrieved of the decision of Inquiry Committee, may approach the learned respondent No.2 for redressal of her grievance in view of the scheme of the Act of 2010. Further, argued that Section 6 of the Act, 2010 provides remedy of appeal before the learned respondent No.2 to an aggrieved person against the decision of the competent authority.According to the learned counsel, where a complainant is dissatisfied with the action or inaction of the Inquiry Committee or the Competent Authority it is the respondent No.2 to whom the complainant can approach for redressal of her grievance. Learned counsel relied upon case laws reported as **2021 PLC (C.S) 839** and **2018 P.Cr.L.J. 806**.

10. I have heard the learned counsel for the parties, learned AA-G and have gone through the record with their able assistance.

11. It is settled principle that question of jurisdiction retains paramount consideration, to be adjudicated upon at the first instance. On careful perusal of orders dated 03.11.2020 and 16.02.2021 passed by the learned respondents1&2 respectively, it reveals that the question of jurisdiction in the matter, as pleaded by the petitioner, had never been the subject before the two learned forums.

12. The learned respondent No.2 is vested with the Authority under the Act of 2010 to entertain and decide a complaint or appeal, as the case may be, filed by either an aggrieved person or the complainant. The forum which is competent to adjudicate upon a matter under the Act of

2010 is, undoubtedly, vested with the Authority to render its opinion on the point of jurisdiction as well, like the case in hand.

13. The matter, as mentioned above, has already been remanded to the learned respondent No.2 for decision of appeal in accordance with law within one month on the basis of documents/evidence of the Inquiry Committee therefore, when the matter in appeal is already open, proper course for the petitioner would be to agitate all the grounds relating to the jurisdiction before the learned respondent No.2 as this court while exercising constitutional jurisdiction in terms of Article 199 of the Constitution is not inclined to adjudge the admissibility or otherwise of any complaint or appeal by surpassing the Authority vested in learned respondent No.2 under the Act of 2010, which is not warranted under the law. The court or the tribunal vested with authority to adjudicate upon the matter on merits can also decide the question of jurisdiction.

14. Suffice it to say, since alternate and efficacious remedy is available to the petitioner before the learned respondent No.2, where the matter is going to reopen pursuant to the order of learned respondent No.1, no further proceedings in the instant writ petition are warranted. It is accordingly **disposed of** with observation that proper course for the petitioner would be to present his case, as pleaded through the instant writ petition on the point of jurisdiction, before the learned respondent No.2, vested with the jurisdiction under the Act of 2010.

**(ARBAB MUHAMMAD TAHIR)**
**JUDGE**

Announced in the open Court on _29.09.2022

**JUDGE**