JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 2618 OF 2023

MUHAMMAD TAHIR

VS

PRESIDENT OF THE ISLAMIC REPUBLIC OF PAKISTAN, PRESIDENT'S SECRETARIAT (PUBLIC), AIWAN-E-SADAR, ISLAMABAD, ETC.

Petitioner by	**:**	**Mr. Taimoor Aslam Khan, Advocate for the Petitioner.**
Respondents by	**:**	**Ms. Sana Arif, Advocate for the Respondent No. 5.** **Raja Zamir ud Din, AAG.** **Ms. Asia Nazir, Chief Nursing Superintendent, PIMS.**
Date of hearing	**:**	**07.04.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition, the Petitioner has challenged the Orders dated 09.08.2023 and 02.09.2022 **("Impugned Orders")** passed by Respondents No. 1 [President of the Islamic Republic of Pakistan **("President")]** and 2 [Federal Ombudsman for Protection against Harassment of Women at the Work Place **("Ombudsman")]** respectively.

2. The brief facts of the case, as stated in the Memo of Petition, are that the Petitioner was serving as an Assistant Clinical Instructor at the Pakistan Institute of Medical Sciences **("PIMS")**/Respondent No.3. The Respondent No. 5 [Khadija Shaheen] was enrolled as a B.Sc. Nursing student at the College of Nursing, PIMS, for the session 2017–2019. On 29.09.2018, she submitted a complaint to the Principal of the College, alleging harassment by the Petitioner. In response, a three-member Inquiry Committee was constituted on 01.10.2018 under Section 3(iii) of the Protection against Harassment of Women at the Workplace Act, 2010 **("Women Protection Act")**. The Committee held meetings on 5th, 11th, and 12th of October 2018, during which statements from eight staff members, including both the Complainant/Respondent No. 5 and the Petitioner, were recorded. On 13.10.2018, the Committee submitted its findings to Respondent No. 3 [Executive Director, PIMS]. However, Respondent No. 3 directed the Committee to submit recommendations in line with Section 4(4) of the Women Protection Act.

Accordingly, on 25.10.2018, the Committee concluded that no penalty could be imposed on the Petitioner due to lack of conclusive evidence. Subsequently, the Complainant/Respondent No. 5 approached the Ombudsman via an Application dated 23.10.2018, alleging that the Inquiry Report was not being provided to her, which was delaying her case. The Ombudsman directed Respondent No. 3 to submit the Report, which was done on 02.11.2018. The Complainant/Respondent No. 5 filed a second Application dated 13.11.2018, alleging retaliation after filing the Complaint. The Petitioner responded the same day, stating he had filed Writ Petition No. 4102/2018 against Respondent No. 3. The Ombudsman ordered that no adverse action be taken against the Complainant/Respondent No. 5. On 13.12.2018, the Complainant/Respondent No. 5 filed a third Application, again alleging non-provision of the Report. The Ombudsman vide the Order dated 13.12.2018 ruled that the Inquiry Committee was improperly constituted and declared its proceedings void. The Petitioner's right to file a reply was closed vide the Order dated 29.01.2019. Aggrieved by the Orders dated 13.12.2018 and 29.01.2019, the Petitioner filed Writ Petition No. 531/2019 before this Court. During the pendency of the said writ petition, the Petitioner raised a jurisdictional objection before the Ombudsman, pursuant to this Court's Order dated 31.05.2019. The objection was dismissed, and it was held that the Ombudsman had jurisdiction. On 13.02.2020, this Court ruled that the initial inquiry lacked lawful authority, and the Complaint could proceed before the Ombudsman, but refrained from commenting on the merits of the case. After receiving the Court's decision, the Ombudsman reinitiated proceedings. The Petitioner filed an application on 28.08.2020 seeking dismissal of the Complaint, which was rejected on 22.10.2020 as repetitive. Evidence was then recorded: the Complainant/Respondent No. 5 testified on 01.09.2021 and produced two witnesses, Mr. Sher Muhammad Hazara and Mr. Mehmood Ahmed on 07.12.2018; all were cross-examined by the Petitioner. The Complainant/Respondent No. 5's evidence was closed on 21.10.2021. The Petitioner, together with two witnesses, presented their evidence on 19.11.2021 and 08.02.2022. All were cross-examined on the same respective dates, and the evidence was concluded on 08.02.2022. Thereafter, the Complainant/Respondent No. 5 sought to summon the DG Nursing, Punjab, as a court witness, but her application was dismissed on 18.02.2022. Later, on 04.04.2022, the Complainant/Respondent No. 5 moved an application to produce an audio cassette, which was allowed and referred to the Federal Investigation Agency (FIA) for forensic analysis. The FIA

Report was received on 26.05.2022, after which final arguments were heard. The Ombudsman, vide Order dated 02.09.2022, allowed the complaint, found the Petitioner guilty of sexual harassment, and imposed the major penalty of removal from service along with a fine of Rs. 500,000/- as compensation to the Complainant/Respondent No. 5. The Petitioner filed a Representation (31-WO-2022) on 05.09.2022 before the President for setting aside the said order, which was rejected on 09.08.2023. Aggrieved by both the Impugned Orders dated 02.09.2022 and 09.08.2023, the Petitioner has filed the instant Writ Petition before this Court.

3. The learned counsel for the Petitioner argued that the Impugned Orders suffer from grave illegality, in as much as, both are based on generalizations that find no basis in law; that both the Impugned Orders fail to consider the most important aspect which is to the effect that the Complainant/Respondent No. 5 had not preferred any complaint in terms of Sections 6 and 8 of the Women Protection Act; that it is astounding to know that both the President and the Ombudsman had imposed a major penalty upon the Petitioner on the generalized belief that no women would ruin her modesty by filing a false complaint of harassment, which generalization, apart from being completely arbitrary, whimsical and without any substance also establishes that there existed no evidence at all on which reliance could be placed; that the President has passed the Impugned Order on the sole ground that the Petitioner had served the Complainant/Respondent No. 5 a notice of defamation; that the notice was issued on 09.11.2018 when the Respondent No. 4/Harassment Committee, PIMS had already exonerated the Petitioner and that the Complaint in which the Impugned Orders have been passed was not preferred until 13.12.2018; that it is a fundamental right for the protection of one's repute to initiate legal proceedings in case the same has tarnished or made the subject of slander and the same can hardly be made a basis for determining harassment; that the Complainant/Respondent No. 5 was unable to produce any evidence or record in support of her allegations and in absence of the same, the sole fact that there existed no previous ill will, malice or grudge in between the parties cannot be made a basis for imposition of major penalties and returning a guilty verdict; that the forums below have not appreciated the evidence, as produced, rather have relied upon conjectures and surmises; that the Impugned Orders are not sustainable in law or facts and as such are liable to be set at naught; and that admittedly, no evidence is available on the record except from statements on oath by both the

Complainant/Respondent No. 5 as well as the Petitioner, thus, rendering it impossible to determine the veracity of one from another. Lastly, the learned counsel prayed for acceptance of instant Writ Petition and for setting aside the Impugned Orders dated 02.09.2022 and 09.08.2023 passed by the Ombudsman and the President, respectively.

4. On behalf of Respondents No. 3 and 4, it is argued that the Petitioner is a habitual litigant who repeatedly seeks relief from this Court, and even the Writ Petitions No. 4102/2018, 4173/2022, on the same causes of harassment are still pending; that the Ombudsman has already decided against him on the Complaint of the Complainant/Respondent No. 5; that the Petitioner's service performance/record is unsatisfactory being involved in different issues; and that FIA's Anti-Corruption Circle reported that he was involved in unethical/unprofessional and criminal activities. In the last, prayer for dismissal of instant Petition has been made.

5. The learned counsel appearing on behalf of the Respondent No. 5 argued that the Impugned Orders have been passed keeping in view the facts and evidence available on record; that the learned counsel for the Petitioner has failed to point out any illegality or irregularity in the Impugned Orders; and that the instant Petition is liable to be dismissed.

6. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

7. The learned counsel has mainly argued that the Complainant/Respondent No. 5 filed Complaint before the Principal of the College of Nursing PIMS, Islamabad on 29.09.2018, which was forwarded to the Chairperson Harassment Committee PIMS, Islamabad on 01.10.2018. That final Report submitted by the said Committee was set aside by the Ombudsman vide Order dated 13.12.2018, on the grounds that the Inquiry Committee was not properly constituted and the proceedings of the Inquiry Committee were not conducted as per law. The Ombudsman then proceeded with the Complaint in the shape of three letters and held the Petitioner accountable for the harassment of the Complainant/Respondent No. 5 vide the impugned Order dated 02.09.2022. The learned counsel stated that no proper complaint was filed by the Complainant/Respondent No. 5 before the Ombudsman, thus the Ombudsman

proceeded against the true spirit of Section 8 of the Women Protection Act, hence, the whole proceedings were conducted illegally and in absence of any proper complaint.

8. The questions for determination before this Court are that as to whether the applications filed by the Complainant/Respondent No. 5 before the Ombudsman, can be considered and treated as a proper complaint filed before the said forum or not, and secondly for invoking Section 8 of the Women Protection Act, a proper complaint is required to be filed for initiating inquiry of harassment or not. For ready reference, Section 8 of the Women Protection Act is reproduced as under:-

> *"**8. [Ombudsperson] to enquiry into complaint. --** (1) Any [complainant] shall have the option to prefer a complaint either to the Ombudsman or the Inquiry Committee.*
>
> *(2) The [Ombudsperson] shall within 3 days of receiving complaint issue written show cause notice to the accused. The accused after the receipt of written notice shall submit written defense to the [Ombudsperson] within five days and his failure to do so without reasonable cause the [Ombudsperson] may proceed ex parte. Both the parties can represent themselves before the [Ombudsperson].*
>
> *(3) The [Ombudsperson] shall conduct an inquiry into the matter according to the rules made under this Act and conduct proceedings as the [Ombudsperson] deems proper.*
>
> *(4) For the purposes of an investigation under this Act, the [Ombudsperson] may require any office or member of an organization concerned to furnish any information or to produce any document which in the opinion of the Ombudsman is relevant and helpful in the conduct of the investigation.*
>
> *(5) The [Ombudsperson] shall record his decision and inform both parties and the management of the concerned organization for implementation of the orders.*
>
> *[(6) The Ombudsperson shall decide a case or appeal, as the case may be, within a period of ninety days.]"*

9. The Complainant/Respondent No. 5 submitted Applications dated 23.10.2018, on 13.11.2018 and on 13.12.2018, before the Ombudsman. The first Application was filed by the Complainant/Respondent No. 5 with the grievance that the Inquiry Committee for Harassment PIMS, Islamabad, is not providing the copy of the Report, which is to be provided to her. The second Application was regarding, restraining the Petitioner not to further defame her at the workplace and also requested for the adjournment of hearing before the Ombudsman due to her exams. The third Application consists of two pages in which the Complainant/Respondent

No. 5 has narrated some events which happened after filing the Complaint against the Petitioner and requested for help in seeking justice as she was not provided the copy of outcome of the Report by the Executive Director, PIMS. The third Application in which the Complainant/Respondent No. 5 showed her dissatisfaction over the inquiry proceedings conducted by the PIMS authorities, as they were reluctant to hand over the copy of Report to her and thus, she ultimately sought justice from the Ombudsman. These applications prompted the Ombudsman to initiate inquiry against the Petitioner, considering it to be continuation of the Complaint filed by the Complainant/Respondent No. 5 before the Principal College of Nursing PIMS, Islamabad. Thus, this Court considers that the Ombudsman has rightly proceeded against the Petitioner and the letters written by the Complainant/Respondent No. 5 are considered to be Complaints filed under Section 8 of the Women Protection Act.

10. The scheme of Women Protection Act is very much clear regarding filing of a complaint before the Inquiry Committee or the Ombudsman. If a Complainant is aggrieved by an order of the competent authority on the basis of recommendations of the Inquiry Committee, Section 6 creates a right of appeal for the aggrieved party before the Ombudsman. Similarly, a complaint can also be filed by the Complainant directly before the Ombudsman. If a Complainant is dissatisfied with the action or inaction of the Inquiry Committee or the competent authority, it is the Ombudsman that the Complainant ought to approach for redressal of such grievance in view of the scheme of the Act.

11. Another ground which was agitated by the learned counsel on behalf of the Petitioner is that the Complainant/Respondent No. 5 has failed to prove her allegations of harassment through evidence and in this regard, reliance is placed on a ruling cited in case titled *"Fahad Faruqui Vs. SZABIST through President and another"* **(2019 P.Cr. LJ 806)** in which it is held that:-

> *"The burden of this trust exclusively lies upon the teacher of any gender, and the student regardless of his gender will be presumed to be weak and potential victim. Any form of friendship between a teacher and a student cannot exist because the bureaucratic structure of a classroom will collapse as the teacher is the head of the class and in a position to pass final verdict with respect to the performance of a student, and any kind of friendship between a teacher and student will naturally be biased which is against the interest of the rest of the class. Furthermore, besides teacher's authority over student and the obligation of being impartial, a friendship might interfere with the studies and*

> *learning of that student. Moreover, consent of a student does not mean that teacher should cross the teacher and student relationship boundaries and in case of any complaint for sexual harassment by a student, the burden should lie upon the teacher to clarify his position to refute and, nullify the allegations levelled against him, as he is dominating, commanding and authoritative position."*

In the present case too, the Petitioner was the teacher of the Complainant/Respondent No. 5 and in the light of the said judgment, the burden was upon him to refute and nullify the allegations levelled against him, as being teacher he was in dominating, commanding and authoritative position. Even otherwise, relationship of teacher and student is a sacred relationship which needs to be protected by all means as if our society fails to protect such relationship then in that case the whole fabric of the society will be ruined and tarnished.

12. In addition to above, it has come on record that the Inquiry Committee constituted by the PIMS Authority reported in their Report dated 25.12.2018 regarding the previous conduct of the Petitioner, and as per their opinion "*penalizing for previous follies does not fall in the sphere of this committee, it is prerogative of the competent authority*". In this regard, reliance is placed on ruling of august Supreme Court of Pakistan in *Uzma Naveed Chaudhry versus Federation of Pakistan,* **(PLD 2022 Supreme Court 783)**, relevant portion of which is reproduced as under:-

> *"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."*

13. In the light of the above discussion, the questions raised in paragraph 8 are answered in affirmative as the grievance of the Complainant/Respondent No. 5 was not properly redressed by the Inquiry Committee, thus she filed three Applications before the Ombudsman and Ombudsman acted upon those Applications and felt that her grievance has not been redressed by the Inquiry Committee constituted by the PIMS Authority. The Applications filed by the Complainant/Respondent No. 5 are considered as proper complaints and the Ombudsman has acted in accordance with law provided under the Women Protection Act. The learned counsel for the Petitioner has failed to point out any

illegality or irregularity in the Impugned Orders, hence, no justification exists for interfering with the concurrent findings of both forums, which have been decided with sound and well-reasoned grounds.

14. For the foregoing reasons, the instant Writ Petition being devoid of any merits is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this 18th day of April 2025.

JUDGE

Sajid/--